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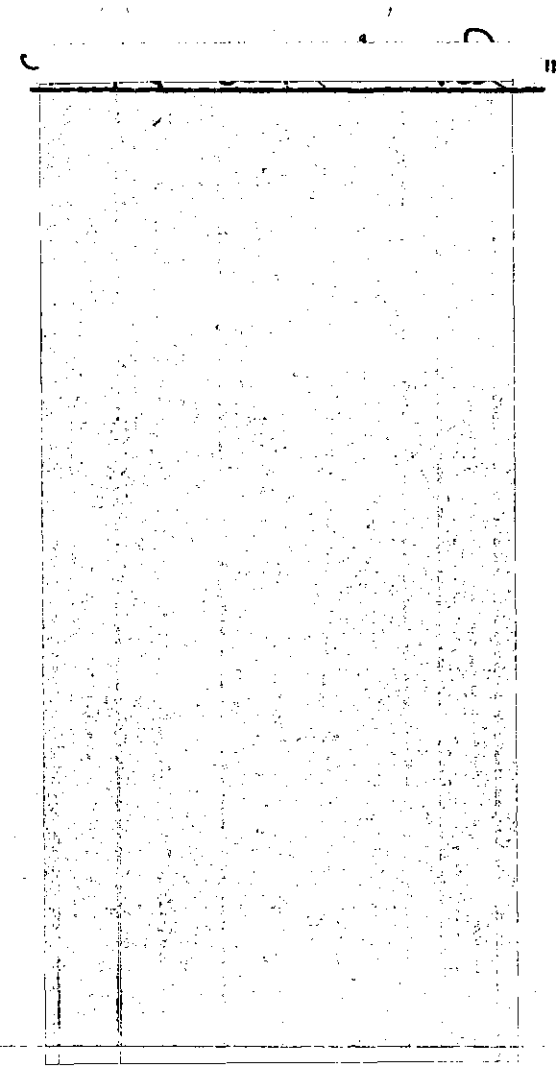

THE PROVISION OF SCHOOL AND PARK SITES THROUGH SUBDIVISION CONTROL

A THESIS

Presented to

the Faculty of the Graduate Division

by

Max Wayne Harral

In Partial Fulfillment

of the Requirements for the Degree

Master of City Planning

Georgia Institute of Technology

June, 1960

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ACKNOWLEDGMENTS

The author wishes to gratefully acknowledge the valuable assistance of the following persons in the preparation of this thesis: Mr. Howard K. Menhinick, Regents' Professor of City Planning, Mr. Malcolm G. Little, Jr., Associate Professor of City Planning, both at the Georgia Institute of Technology, Mr. Willard C. Byrd, landscape architect and city planner, and Miss D. Natelle Isley, in charge of the library of the School of Architecture. Professors Menhinick and Little have contributed much through their generous counsel and constructive criticism. Mr. Byrd, as a recognized authority on subdivision design, has lent stature to this thesis through his helpful review. Miss Isley, in her usual manner of going above and beyond the call of duty, has kept unceasing vigilance for pertinent materials. Each of these persons has contributed freely of his time and has shown an interest in the subject matter that has been encouraging.

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SUMMARY

When land is subdivided for residential purposes and subsequently becomes inhabited, new school and recreational facilities are needed to serve the occupants. In order for the community to obtain proper sites for these facilities, the areas must be preserved in an open state until they can be acquired. Also, in line with the needs created by new subdivisions, contributions may be required of the subdividers in providing these sites.

Subdivision regulations, adopted by the local government under statutory authority, sometimes include provisions dealing with the preservation of sites and contributions toward public acquisition. In order to evaluate the effectiveness of existing school and park site provisions and to determine the types of provisions used to make sites available to the public, a survey of the regulations of 206 local governments was conducted. Of these, 123 contained school- and park-site provisions.

A great variety of site provisions were contained in the subdivision regulations examined, not only in the combinations of the various types of provisions but also in the wording of provisions having the same purpose. Some of the provisions were for the purpose of determining the size and location of the sites to be provided and some dealt with the methods to be used for public acquisition of them.

There is widespread use of provisions that base size and location upon designations in a community plan or map. If the size

and location of designated sites are based on population or density standards and other appropriate factors, this is the best procedure. Other methods employed were these: requiring a certain percentage of the land, using population standards without city-plan designation, or using vague phrases, such as "suitable location" and "adequate size," to guide the discretion of the administering agency.

It may be possible to acquire sites or portions thereof immediately upon plat approval; or, it may be necessary to reserve them for future acquisition. Reservation provisions now in use sometimes specify a time limit and sometimes do not. Although the judicial attitude cannot be accurately predicted, due to the few cases decided, it can be assumed that the courts will not allow unreasonable economic damage to the landowner. Therefore, a reservation of indefinite duration to be terminated upon the occurrence of legislatively defined "damage" is thought to be a reasonable solution from the judicial point of view; and it also has favorable characteristics from the city planning viewpoint.

The amount of site cost to be borne by the subdivider should be decided by the particular community in accord with its over-all planning and housing policies. If contributions are required, the use of cash payments, rather than compulsory dedication, will be necessary if usable sites are to be obtained. Court decisions on the few cases on dedication and cash contribution requirements have apparently turned on whether there was adequate statutory authority.

The study of existing site provisions in subdivision regulations and of authoritative opinions and court decisions upon them leads to

the conclusion that provisions can be drafted which are judicially sound and which will result in adequate public sites for schools and parks within new subdivisions.

INTRODUCTION

Through the process of subdivision, land previously devoted to other purposes becomes available for urban residential use and subsequently becomes inhabited. The population of the subdivision creates a need for school and park facilities to serve it. If sites for these facilities are to be properly located and of adequate size, they must be preserved in an open state; and this action should be taken prior to or at the time of subdivision. Otherwise, after development of the subdivision, land cost and street design may make acquisition of good sites impossible.

The purpose.--The purpose of this study is to explore the most effective methods of preserving in an open state areas to be used for public parks (all types of recreational open spaces) and schools through the regulatory instrument of city planning known as "subdivision regulations."

The approach.--The purpose will be achieved through

(1) an analysis and evaluation of the content and desirability of school and park site provisions in existing subdivision regulations (Chapter I);

(2) a study of the legal acceptability of current methods for preserving school and park sites and of the probably acceptability of new or untested provisions (Chapter II); and

(3) recommendations of the types of provisions needed in subdivision regulations to make possible the public acquisition of properly

located school and park sites of adequate size to serve new subdivisions (Chapter III).

CHAPTER I

A SURVEY OF SCHOOL AND PARK SITE PROVISIONS IN SUBDIVISION REGULATIONS

In order to discover the present methods of providing open spaces and school sites through subdivision controls, a survey of the subdivision regulations of 206 local governments, having populations from under 10,000 to over 500,000 and located in 41 states and the District of Columbia, was conducted in August, 1959.

The various provisions dealing with park and school sites were then organized into categories and an analysis made of extent of usage and desirability of each type of provision. A number of authoritative works, suggested and proposed ordinances, and previous surveys were used in identifying the more desirable characteristics, the weaknesses, and the trends in the provisions. Of course, it cannot be assumed that all the considerations pertinent to the best solution of school and open space requirements are evidenced in the current provisions but, rather, that the considerations which appear are those which cities have recognized as important.

Current provisions have an influence upon the recommendation of new or altered provisions to function more adequately in the setting aside of required school and park sites. Improvement rests upon the experience and prior knowledge which are found to some extent in previously adopted regulations and their administration.

Each local government having subdivision regulations with site provisions which were reviewed is listed in Tables 2 and 3 in the

Appendix. The types of public sites to which the provisions apply and their compulsory or voluntary character are given in Table 2. A tabulation of the provisions according to the categories used in "Provisions Dealing with Size and Location" and "Methods of Obtaining School and Park Sites," sections of Chapter I, is shown in Table 3.

Compulsory or Voluntary Character of the Provisions

Some school- and park-site provisions within subdivision regulations are of a compulsory character and state that compliance "shall" or "may" be required, while others are of a voluntary character and ask that the subdivider consider sites. There are many variations of compliance provisions, however, from which these two broad classes emerge.

Thirty-nine per cent of the surveyed subdivision regulations with school- and park-site provisions apparently do not compel compliance. Such voluntary provisions are usually characterized by the phrase "due consideration." It would be difficult to select a provision of this type that would be typical in wording but the following provision is typical in meaning:

> Due consideration shall be given to the allocation of suitable property for schools, parks and playgrounds.
>
> (Dayton, Ohio, Sec. 231--10)

There are variations in the types of public sites to which this sort of provision applies. Most often, about 88 per cent of the time, it applies to school sites, parks, and playgrounds, and in some of these cases to other public sites, as well; in the remaining cases, 12 per cent, it includes only parks and playgrounds. There are also variations in the methods used for preserving these sites

for public use--whether by dedication or by reservation for acquisition by a public agency.

Voluntary provision of school and park sites has been in vogue since the early days of including public-site provisions in subdivision regulations. The following comment was made upon the results of a 1928 survey by Howard K. Menhinick, presently Regents' Professor of City Planning at the Georgia Institute of Technology: "Few platting regulations other than Oklahoma City compel dedication of open spaces for parks and playgrounds but several recommend that due consideration be given to the dedication or reservation of suitable sites for schools and recreation areas."[1] Another survey, conducted in 1937 and 1938 by Harold W. Lautner, found the following: "Forty of the 103 cases [of subdivision regulations containing open space requirements] stated only that 'due consideration' be given to the provision of open spaces, 30 cases explicitly required the provision of open spaces, and the remaining 33 cases fell between these two positions."[2] Another work, published in 1947, states that "various methods [of providing public open space] are used, the most common being the requirement that due consideration be given by both developer and city to the dedication or reservation of open space for playgrounds, parks, schools, etc."[3]

Bringing the need for school and park sites to the attention of the subdivider must have accomplished much good, as witnessed in many cases by the voluntary provision of the needed areas by land developers.

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[1] Henry V. Hubbard and Theordora Hubbard, Our Cities Today and Tomorrow, Cambridge, Harvard University Press, 1939, p. 147.

[2] Harold W. Lautner, Subdivision Regulations, Chicago, Public Administration Service, 1941, p. 179.

[3] Seward W. Mott, "Subdivision Regulations and Protective Covenants," Technical Bulletin No. 8, Washington, Urban Land Institute, 1947, p. 2.

However, negotiations between the planning commission and the subdivider cannot be relied upon to provide public-use areas of suitable size and appropriate location. Where the community's experience in planning has advanced to the point where predetermination of sites is possible, requirements should be compulsory, not voluntary.

The remaining 61 per cent of the regulations with site provisions required that spaces for parks, playgrounds, and schools be reserved for or dedicated to public use. The variations among these provisions included the purpose of the open space--whether for school sites, or recreation areas, or both; and the method of preservation for public use--whether by dedication or reservation for public purchase. In about 57 per cent of these cases, the provisions applied to schools, parks, and playgrounds, sometimes including other public sites; in 42 per cent of the cases, they applied to parks and playgrounds but not to schools, including automobile parking spaces in two of these cases; and in one per cent (one case), they applied only to schools. For preserving the integrity of sites, dedication only was required in 24 per cent of the 75 provisions with compulsory compliance; dedication with reservation for a specified time limit was used in 12 per cent of the cases and reservation with no specified time limit in 24 per cent of the cases; dedication with cash contribution requirements was used in 3 per cent of the cases; reservation for an indefinite time period was used in 12 per cent of the cases and for a specific time period in 11 per cent; and, the requirement of cash contribution was combined with reservation for an indefinite time period in one per cent of the cases (one) and with reservation for a specific time period in one per cent of the cases (one). The remaining 12 per cent of the cases were not

specific as to the method of reservation to be employed but contained such phrase as "may request the plat to show," or some such phrase as "shall be provided" in connection with percentage requirements, or, in one case, the phrase "suitable open spaces may be required," based on population standards.

Provisions Dealing with Size and Location

The ultimate objective of school- and park-site provisions is to make it possible for the community to acquire sites that are properly located and of adequate size. To accomplish this objective, standards have been included in subdivision regulations to guide the administering agency in determing size and location.

Standards for Determining Size and Location

Before a school- or park-site can be acquired, two basic questions must be answered: (1) "How much area is needed?" and (2) "Where should the site be situated?". The succeeding subsections will deal with these questions. The planning commission or other agency administering the regulations must be guided by the standards set forth in the state enabling statute and in the local ordinance. The word "standards" as used here means any provisions which are intended to guide the commission in making a uniform application of the regulations. Subdivision regulations may contain the standards or may incorporate them by referring to an authoritative publication, to a city plan, or to another ordinance in which they are contained.

Conformity with city plans.--The designating of school- and park-sites on city plans is a frequently used device. It is one that is advantageous in many respects and in recent years has been growing in popularity.

City plan compliance phraseology is used in those provisions which require sites and also in those which suggest consideration, although perhaps it is more frequently used with the former. In 49 per cent of the 75 cases requiring compliance, the size and location of the public areas to be provided were determined by reference to the master plan or other city plans; and in 42 per cent of the 48 provisions having voluntary compliance, reference was made to city plans.

Required city plan conformance many times forms an integral part of such a provision as the following:

> Where a school, neighborhood park, or recreation area or public access to water frontage, shown on an official map or on a plan made and adopted by the planning commission, is located in whole or in part in the applicant's subdivision, the planning commission may require the dedication or reservation of such open space. [4]

The following wording is perhaps somewhat more representative:

> Where a proposed park, playground, school or other public use shown in a Master Plan is located in whole or in part in a subdivision, the Planning Board may require the dedication or reservation of such area within the subdivision in those cases in which the Planning Board deems the requirements to be reasonable. [5]

Those provisions specifying "due consideration" ask for harmony with city plans in language such as the following paraphrase: "Due consideration shall be given to the provision of sites for schools, parks, and playgrounds in accordance with planning commission plans."

Sometimes there is a provision which relates the subdivision regulations as a whole to the master plan, using such phrases as

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[4] Subdivision Standards, Nashville, Tennessee State Planning Commission, Oct., 1959, p. 19. (Article III, D, 1).

[5] Control of Land Subdivision, Albany, N. Y., New York Department of Commerce, 1954, p. 29.

"conform to" or "in accordance with." The vague terminology of this provision has been interpreted as a "...principle to be followed rather than an explicit instruction."[6] Since the provision appears not to be an explicit and definite requirement, it is regarded by the author as insufficient to preserve the integrity of the public sites shown on the plan.

Percentage of subdivision area.--Requirements that a percentage of a subdivision be devoted to public use have frequently been used in the past and are still extensively used, although they have come, by and large, into ill repute. They appear as both compulsory provisions and voluntary provisions. A percentage may be suggested simply as a guide even in those provisions which are compulsory. The provisions normally suggest or require that a certain percentage of the net or gross area of a subdivision be set aside for schools and open spaces, or that not less than nor no more than the specified percentage be set aside.

Mr. Lautner, in 1941, stated: "Among the cases which 'required' provision of open spaces, 27 [56 per cent] made percentage requirements as against 11 [23 per cent] which simply specified 'adequate.' Of those making percentage requirements, 11 [41 per cent] required dedication of 'not less' than a specified percentage, 12 [44 per cent] secured the subdivider against unreasonable demands by stating the requirement as 'not more' than a specified percentage, and 4 [15 per cent] specified the percentage desired."[7] For the purpose of comparing the

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[6]"Public Open Spaces in Subdivisions," Planning Advisory Service Information Report No. 46, Chicago, American Society of Planning Officials, Jan.-Feb., 1953, p. 5.

[7]Lautner, op. cit., p. 183.

findings of the Lautner survey with the author's current findings, the following figures are given. Of the 75 cases which required school and park sites, 43 per cent had percentage provisions and 23 per cent specified that the site be "adequate," "suitable," or some other similar qualification and contained no percentage provisions. Nineteen per cent of those having percentage provisions specified "not less than" (or other similar phrase) a certain percentage, 37 per cent stated "not more than" a specified percentage, 31 per cent required a certain percentage or percentage range, and 13 per cent suggested percentages as guides to meeting site requirements but did not make them mandatory. Of the 48 voluntary compliance cases, 15 per cent contained percentage provisions.

Although the language may not be exactly the same, required percentage provisions read something like this: "Not less than 5 per cent of the net area of the subdivision, exclusive of streets, shall be provided for parks and playgrounds," or, "10 per cent of the gross area of the subdivision shall be set aside for schools, parks, and palygrounds." The language used in each case depends, of course, upon whether the upper limit, the lower limit, a range, or a specific figure is given for the percentage and upon whether the percentage is based on gross or net area.

> No arbitrary percentage of the area will be insisted upon, but in general the Commission[8] deems not less than 5% of the gross area of a subdivision to be adequate.
>
> (Owensboro, Ky., Sec. 3, F)

Opinions are varied on the percentage of land which a subdivider can economically afford to dedicate. One source says five per cent is

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[8]Wherever the word "commission" is used, it refers to the planning commission unless otherwise indicated.

the maximum.[9] In the opinion of one realtor, Mr. W. E. Harmon, ten per cent was a wise business practice.[10] It is said that a study by Mr. Robert Whitten shows "...that in a financially promising development of 160 acres it is practicable to devote 11.4 per cent of the land area to small parks and recreation spaces."[11]

Authoritative comments upon school- and park-site percentage requirements have almost unanimously been adverse. This criticism is one of long duration, as the following quotations will show. "In warning planners and recreation leaders, at the National Recreation Congress in 1927, against indiscriminate reservation of open spaces, the President of the National Association of Real Estate Boards, Mr. C. C. Hieatt, said 'I have heard the rule laid down that one acre in every ten in a subdivision ought to be set aside for public use. That sounds alright in theory, but it goes without saying that if you are subdividing a small tract of ten acres, you cannot cut out one acre and devote that to playgrounds without having, perhaps, a very illogical arrangement.'"[12] In a 1942 publication, this comment was made: "While recreational areas are desirable in all instances, it would be difficult to set a minimum proportion which should apply in

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[9]The Community Builders Handbook, Washington, Urban Land Institute, 1947, p. 91.

[10]Clarence A. Perry, "The Neighborhood Unit," a monograph from Neighborhood and Community Planning, Regional Survey of New York and Its Environs, Vol. VII, New York, Committee on Regional Plan of New York, 1929, p. 61.

[11]Ibid., p. 61.

[12]Hubbard and Hubbard, op. cit., p. 156

all cases."[13] Several years later, in 1947, this opinion appeared: "Where a percentage is specified or an attempt is otherwise made to require a specific amount of land to be set aside in each subdivision, the regulation has either not been enforced or the results have usually been unsatisfactory. Percentage regulations have resulted in a multitude of little parcels of public land too small to effectively use and too expensive to maintain."[14] From a relatively recent publication (1950) comes this view: "The policy in some cities of requiring that a fixed percentage of land be dedicated for park and recreation use, regardless of the size of the project cannot be recommended."[15]

The use of land dedication requirements based on percentages has been a very unsatisfactory way of obtaining sites. Where sites are to be provided in conformity with city plan designation, the use of such requirements by themselves would not necessarily help in obtaining these sites, since subdivision boundaries rarely follow neighborhood boundaries. However, when it is desired to have the subdivider contribute to site cost, percentage of land to be contributed could be combined with cash contribution requirements and city plan designations in a useful manner. For example, if a site designated on a city plan fell within the subdivider's plat, his cash contribution to site cost might be the required percentage of the total value of the net acreage of his subdivision, with the option of using land of equivalent value to meet the cash contribution requirements.

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[13] Robert E. Merriam, The Subdivision of Land, Chicago, American Society of Planning Officials, 1942, p. 30.

[14] Mott, op. cit., p. 2.

[15] Home Builders Manual for Land Development, Washington, National Association of Homebuilders of the U. S., 1950, p. 207.

Population standards for open space.--Some authorities have proposed the possibility of relating site requirements to population standards, possibly those recommended by the National Recreation Association or by school authorities. Some cities have already begun to use population standards. Radnor Township, Pennsylvania, expects the subdivider in general to dedicate two acres of recreation area for every 1000 of future population within the subdivision.[16] The regulations of Raleigh, North Carolina, request that one acre per hundred families be preserved for park and recreational areas. Stockton, California has a provision similar to Raleigh.

Standards might be used in the absence of master-plan designation or as an additional administrative standard. The New Jersey Division of Planning and Development makes the following comment: "There has been considerable discussion about including ... some mention of the possibility of dedication of park lands in subdivisions in those municipalities that have some established standards for recreation areas. If this is desired locally, it should be included. This, of course, does not refer to, nor should it interfere with, the reservation of such areas as shown on the master plan."[17] One provision, which ties in population standards with required dedication or reservation of the public sites shown on the master plan, contains the following clause:

> . . .the Commission may require the dedication or reservation of those spaces [shown on the master plan] when the Commission

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[16] "Public Open Spaces in Subdivision," op. cit., p. 8.

[17] A Guide for the Preparation of Municipal Land Subdivision Control Ordinances, Trenton, N. J., Division of Planning and Development, New Jersey Department of Conservation and Economic Development, Aug., 1956, p. 10.

> determines that the future population of the city requires the establishment of such recreation and educational facilities. 18

Another provision requires compliance with "standards" (presumably referring to population) as an alternative to master plan designation.

> If portions of the master plan contain proposals for drainage rights-of-way, schools, parks, or playgrounds within the proposed subdivision or in its vicinity, or if standards for the allocation of portions of subdivisions for drainage rights-of-way, school sites, park and playground purposes have been adopted, before approving subdivisions, the Planning Board may further require that such drainage rights-of-way, school sites, parks or playgrounds be shown in locations and of sizes suitable to their intended uses. (Garfield, N. J., Art. VIII, 1)

The survey disclosed provisions relating to standards in 5 per cent of the 123 subdivision regulations which contained school and park site provisions. All but one of them were in provisions which required compliance.

Standards could be beneficial in at least two ways. (1) Population predictions for the school- or park-service area should be made on the basis of the minimum lot sizes or maximum densities permissible under the subdivision regulations. Population standards should then be applied to the predictions to determine the size of the site to be designated on the master plan. (2) Where the subdivider is asked to contribute to the cost of providing public sites, standards could be usefully employed in the determination of his "fair share."

Suitability of size and location.--Such words as "reasonable," "adequate," "suitable," and "proper" have been used to characterize sites which will be acceptable. The wording has been applied in provisions of both required compliance and "due consideration" types. In the

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[18] Frank E. Horack, Jr. and Val Nolan, Jr., Land Use Controls, St. Paul, West Publishing Co., 1955, p. 206.

Lautner survey,[19] 60 per cent of the 103 cases mentioning open spaces used the word "suitable" to describe the desired character of the site. In the present survey, 29 per cent of the 123 cases having school or park site provisions used the same word or one similar in meaning.

The following provisions are given as examples:

> Areas set aside for parks and playgrounds to be dedicated or to be reserved for the common use of all property owners by covenant in the deed, whether or not required by the Commission, shall be of reasonable size and character for neighborhood playgrounds or other recreational uses.
>
> (Norwalk, Conn., Sec. IV, 12)

> Where proper, open spaces suitably located and of reasonable size for public schools, play fields, parks, or other recreational purposes, for local or neighborhood use, shall be dedicated...or reserved...
>
> (Augusta, Ga., Art. IV, Sec. L)

> Areas for parks and playgrounds shall be of reasonable size for neighborhood playgrounds or other recreation uses.
>
> (Rome, N. Y., Sec. 4(19))

> Adequate, convenient and suitable areas for parks or playgrounds, or other recreational uses, may be required in the discretion of the commission.
>
> (Troy, N. Y., Sec. III, D, 1)

> Due consideration shall be given to the laying out of adequate local parks and playgounds.
>
> (Cranston, R. I., Sec. 4(8))

> Proposed subdivisions shall provide appropriate open spaces, suitably located and of reasonable size for parks, playgrounds, play lots, play fields or other recreational areas as may be necessary.
>
> (San Antonio, Tex., Sec. 53--3, F)

> Before approval of a plan the Board may also in proper cases require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air. The park or parks shall not be unreasonable in area in relation to the land being subdivided and to the prospective uses of such land.[20]

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[19] Lautner, op. cit., p. 183.

[20] "Suggested Rules and Regulations Governing the Subdivision of Land," Planning Memo, Boston, Division of Planning, Massachusetts Department of Commerce, Dec., 1953, p. 7. (Section IV, C)

On the basis of his survey experience, Lautner has given certain school- and park-site provisions which "would be reasonable to enforce and beneficial in their results." They include:

> Where proper, open spaces suitably located and of reasonable size for playgrounds, playfields, parks or other recreation purposes, for local or neighborhood use, shall be dedicated to the city or reserved for public use under private ownership or easement, or reserved for acquisition by the city within a period of...(one to five) years, by purchase or other means.[21]

Little value can be seen in the use of such vague terms as "suitable" and "appropriate;" they fail to describe adequately the character of the sites desired. Provision concerning size and location should be specific enough to enable the subdivider to know the minimum requirements before he enters into negotiations with the planning commission and into negotiations to buy land and specific enough to give definite guidance to the planning commission in its administrative capacity of plat review. It is true that vague provisions allow flexibility in meeting new situations; but they of necessity mean rule by men rather than rule by law, since the absence of standards to guide the men who administer them makes arbitrariness and discrimination possible.

Consideration of land use and density.--About 11 per cent of the regulations having site provisions stipulated that the land use and density characteristics of the proposed subdivision should be considered in connection with dedication or reservation requirements. These provisions are essentially of two types. Some of them are concerned with the type of land use (residential, industrial, or commercial) and the population density if the use is residential; others relate to the size of the residential development (large-scale neighborhood unit) and to land use situations not otherwise covered in the site provisions.

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[21] Lautner, op. cit., p. 185.

A suggested provision by Lautner, of the first type, is similar to some actually found:

> In determining such areas [parks, playgrounds, playfields, or other recreational areas] for dedication or reservation, the commission shall take into consideration the prospective character of the development, whether dense residence, open residence, business, or industrial.[22]

Consideration of the "character" of a subdivision calls attention to the pertinence of population density but does not give any standards sufficient to guide the administration of the planning agency. In place of these vague provisions, density standards, dealing with the number of persons or families per unit of area, or population standards, dealing with the total number of persons in an area, should be used in determining the size of sites shown on community plans. In spite of its weakness, a word of commendation is in order for this provision. It is the only sort of provision which recognizes that subdivisions of differing population densities will have different site area requirements and that public open spaces may be desirable in industrial and commercial areas, as well as residential areas.

The Macon, Georgia, regulations include a provision of the second type, concerned with large neighborhood developments.

> Where deemed essential by the Commission, upon consideration of the particular type of development proposed in the subdivision, and especially in large-scale neighborhood unit development, the Commission may recommend the dedication or reservation of such other areas or sites [than those proposed by the subdivider] of a character, extent and location suitable to the needs created by such development for schools, parks and other neighborhood purposes.
>
> (Macon, Ga., Sec. IV, F, 2)

There are other provisions which are essentially the same as Macon's

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[22] Lautner, op. cit., p. 185.

except that the commission may require rather than recommend. Most of the Macon provision is essentially a provision of the recommended regulations of the U. S. Housing and Home Finance Agency. There are, however, two differences of importance. The provision in the latter is applicable to "large-scale neighborhood unit developments not anticipated in the Master Plan" and states that the Planning Board "may require" the areas or sites. The Agency's version is much the better of the two because it contemplates the use of a master plan and because it is mandatory. Adequate planning should, however, make the use of special provisions for neighborhood-unit developments unnecessary.

The combining of open spaces.--A type of provision which was found in 12 per cent of the ordinances with site provisions has as its intent the combining of open space areas set aside in small subdivisions. Some of these apply to "small" subdivisions, while others apply to all subdivisions under a specified size, usually 40 acres.

The provision calling for combining open spaces in subdivisions under 40 acres with similar spaces in adjacent areas is of generally uniform language in the cases studied. From the High Point, North Carolina, regulations comes an example:

> Where the tract contains less than forty (40) acres, such reservation for open spaces shall be combined, wherever possible, with similar reservations in adjoining tracts.
> (High Point, N. C., Sec 18)

This Augusta, Georgia, provision is representative of the provisions applying to "small" subdivisions:

> Where a subdivided area is too small to provide an open space of suitable size the Planning Commission may require the provision of such open space as may be combined with open space provided or to be provided by adjoining areas, in order to provide in the aggregate an open space of reasonable size.
> (Augusta, Ga., Art. IV, Sec. L, 3)

If arbitrary percentage requirements are to be used and not related to master planning, it would seem that it is virtually a necessity that a provision of the type under discussion be used in conjunction therewith in order that the city might not be burdened with a large number of almost worthless, very small and scattered open spaces. If, on the other hand, there is master plan designation of all school and park sites, it is difficult to see the need for this type of provision. However, some situations might occur in which it would be useful.

Waiver or Reduction of Requirements

In 9 per cent of the site provisions reviewed, provision was made for the reduction or the removal of school- and park-site requirements. This figure reflects only those provisions which applied specifically to school- and park-site requirements. In many other cases, reduction and waiver applied to the subdivision regulations generally.

The bases for waiver or reduction are either: (1) "undue hardship" or (2) the provision of sufficient open space elsewhere so that public open space in the subdivision is not needed. Some provisions use both of these bases, while others use only one.

The Hamilton, Ohio, ordinance has the following provision, which uses both bases:

> No plat of as much as ten acres, in which as many as forty per cent by number or by area of the lots are or are intended to be sold or used for residence purposes, shall be approved
> (a) [Unless the plat shall provide the requisite public open spaces; or]
> (b) Unless in order to relieve exceptional hardship which would result from the strict application of the requirement of paragraph (a) of this section, the platting commissioner and the council shall reduce or waive such requirement; or
> (c) Unless, by reason of the provision of exceptionally large lots, or of other adequate recreational and open air spaces in such subdivision, the platting commissioner and the council deem the requirements of paragraph (a) of this section to be unnecessary or unreasonable, and waive it accordingly.
>
> (Hamilton, Ohio, Sec. 20-2612)

Mr. Lautner has expressed the two bases for waiver or reduction very concisely in the following:

> The commission shall reduce or remove the requirements for open space and sites in special situations were such requirements would cause exceptional hardship or where there is sufficient supply of open space elsewhere to serve the population in the area to be regulated.[23]

The Bay City, Michigan, ordinance provides an example of the hardship basis used alone. Thus,

> If the dedication of property for public purposes would result in undue hardship to the property owner, then the commission may reduce or remove said requirements or cause a public hearing to be held by an arbitrary body to determine the amount of property to be dedicated, if any.
>
> (Bay City, Mich,, Art. 4, Sec. 405)

It may be difficult to eliminate hardship provisions applicable to school and park sites. There will possibly be situations which have not been foreseen and which, if they were foreseen and provided for in the subdivision control ordinance, might unduly complicate it. None of the provisions scrutinized, however, contained any guidance at all as to what constitutes undue, exceptional, or unnecessary hardship. If hardship provisions should prove necessary, it would be advantageous to include a description of the conditions under which hardship could be claimed. This has been done in zoning ordinances with regard to the issuance of variances and has produced beneficial results.

The other basis for waiver or reduction, that of "sufficient open space elsewhere," seems weak. There appears to be no valid reason why large lots, should be allowed to reduce <u>all</u> types of open space. Neighborhood parks -- <u>passive</u> recreation areas -- quite conceivably would not be needed in an area having large lots or nearby community parks.

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[23] Lautner, <u>op. cit.</u>, p. 185.

If not, they should not be shown on community plans nor should they be required. There seems to be no logical excuse for allowing space "elsewhere" to reduce the requirements for active recreation areas -- playfields and playgrounds -- which need to be located within easy reach of those they serve.

Critical Summary of Size and Location Provisions

The use of school- and park-site designations in city plans is regarded as a good device for determining size and location of sites. It puts the subdivider on notice as to what the city expects of him and is adequate to guide the commission in its administration.

Dedication requirements based upon percentages of land have in the past produced a host of small parcels unsuitable for their intended use and for this reason have been much criticized.

The few cities which have related population load to site area have made a significant contribution to the formulation of effective provisions. The size of school and park sites shown on the master plan should be computed by using population standards applied to the predicted population of an area.

When it is desired to require the subdivider to contribute to the cost of school- and park-sites, either percentage provisions or lots or dwelling units could be used as a basis for computing the contribution. A subdivider might be required to make a cash contribution equal to a certain percentage of the value of his net or gross acreage, or a parcel of equivalent value might be acceptable if it were a part of a school or park site shown on a community plan. Another alternative is to base the contribution on the number of lots or dwelling units.

Those provisions which use the words "suitable," "proper," etc., to guide the commission in deciding where and how large the sites will be are totally insufficient to provide the administrative guidance which the subdivider has a right to expect. Those provisions which specify "consideration" of land use and density are subject to the same objections as the preceding "suitability" words.

If it is not possible to eliminate provisions for the waiver or reduction of school- and park-site requirements in cases of undue hardship, it would be advantageous to describe the conditions under which the administrator could grant relief. Provisions which allow a reduction of recreation areas because of large lots and nearby public open spaces may be justified in the case of neighborhood parks but should not apply to playfields and playgrounds.

Methods of Obtaining School and Park Sites

In order to preserve the integrity of school and park sites at the time of subdivision plat review and thus keep them available to the city in the appropriate size and location and at reasonable cost, several types of site provisions have been employed. It is apparent that title or easement must either pass immediately to the government at the time of subdivision or the site must be reserved for subsequent public acquisition.

The source of funds to be used in acquiring sites is, naturally, fo prime importance, regardless of when the sites are to be purchased or obtained. The city may bear the entire cost or may require the subdivider to bear part or all of it.

Reservation for Public Acquisition

Reservation of school and park sites for subsequent acquisition by the city or by a public agency is desirable when the funds for purchase are not available at the time the subdivision plat is accepted. The need for reservation is most urgent, of course, in those cities which require no contributions from subdividers. Even in those cities which require contributions, however, the subdividers would likely not be required to furnish all public sites for which a need exists, and there would be a need to reserve for a time those areas not coming to the city cost-free. Reservation requirements are present in 41 per cent of the regulations reviewed which contained school- and park-site provisions.

As might be expected, reservation provisions are sometimes used along with dedication provisions. The following combines reservation and dedication:

> Where, as indicated by the Master Plan, a subdivision contains, wholly or in part, a proposed public open space or a proposed site for public building, such area shall be dedicated to a public agency, or reserved for acquisition thereby within a period of five years by purchase or other means.
>
> (Portsmouth, Ohio, Sec. VI, I)

The Aiken, South Carolina, provisions are exceptionally complete. They combine population standards and master-plan designation with dedication and reservation.

> A. Where proper, open spaces suitably located and of reasonable size, as recommended by the National Recreation Association for public schools, play fields, parks or other recreational purposes, for local or neighborhood use, shall be dedicated to the appropriate municipal or governing body or reserved for public use under private ownership or easement, or reserved for acquisition by the municipal or governing body within a period of five (5) years by purchase or other means. If purchased, developer agrees that such purchase shall be at raw land price.
> B. Open spaces and sites for public purpose designated in the Master Plan shall be dedicated to the Municipal or governing body or reserved for acquisition by the municipal or governing body within a period of five years.
>
> (Aiken, S. C., Art IV, Sec.4.11)

Salt Lake City, Utah, implements the master plan through the use of the following concise wording:

> Dedication of all other [than natural or scenic features] public open space within the subdivision will be required in accordance with the master plan of Salt Lake City. Where this plan calls for a larger amount of public open space than the subdivider can be reasonably expected to dedicate, the land needed beyond the subdivider's fair contribution is to be reserved for acquisition by the City, provided such acquisition is made within 5 years from date of approval.
>
> (Salt Lake City, Utah, Sec. 6813,(D))

One innovation which is found in a few of the more recent subdivision regulations is a description of the purpose of the provisions, which relates requirements to police power objectives. Mary McLean, speaking at the local government conference on subdivision control held at the University of Pittsburg in 1957, pointed out that this innovation is illustrated in the Raleigh, North Carolina ordinance. The sections to which she referred are as follows:

> [The regulations are adopted]'...in order to provide for suitable residential neighborhoods with adequate streets and utilities and appropriate building sites, [and] to save unnecessary expenditures of public funds by reserving space for public lands and buildings.'

The reservation clause says:

> 'To insure orderly development of the community in accordance with the general principles set forth on the land development plan the subdivider will be required to reserve open spaces for parks, schools, fire stations and playgrounds for a period not to exceed six months from the date of submission of the preliminary plat....'[24]

One of the criticisms of present reservation clauses has been that land may be removed for a period of time from any reasonable economic use with no compensation to the owner. If reservation is to be required, during which the subdivider can make no improvements upon the land reserved, it would seem desirable to grant him some type of compensation

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[24] Mary McLean, "Filling Neighborhood Needs, Recreation and School Sites," Proceedings, Local Government Conference on Subdivision Control, Pittsburg, Institute of Local Government, University of Pittsburg, 1957, p. 39.

for his forbearance. If the city did not acquire the land, the owner might very well be put to some added trouble and expense in preparing it for use. One source presents this picture of the landowner's woes: "...If he is compelled to reserve a portion of the subdivision for a park and the municipality ultimately decides not to acquire the land, it may be difficult to divide this portion of the tract into lots of satisfactory shape and size. An additional street may be needed requiring added engineering and legal fees. Or, the subdivider might be required to submit a new plat for the park area, thereby necessitating a duplication of the procedure in filing and receiving approval on preliminary and final plats."[25] Of course, if the planning commission allowed him enough discretion in the delineation of the school or park site, the subdivider might be able to obviate some of these objections by so designing the street system that the reserved site could subsequently be divided into lots without difficulty. Another reason for compensating the subdivider is that the designation of reserved areas on a plat will likely result in the subdivider's losing most property rights to the purchasers of the lots, i.e., there is the possibility that surrounding property owners may acquire a "vested interest" in the reserved areas.

The State of Maryland has developed an interesting approach which applies to all reserved public sites. "Under the Maryland statute, areas may be designated on the master plan as 'reserved' for public purposes. For three years after the plan has been adopted,

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[25]John W. Reps, "Control of Land Subdivision by Municipal Planning Boards," Cornell Law Quarterly, Vol. 40, No. 2, Winter, 1955, p. 273.

the owner is not allowed to place any improvements in the reserved area and, as a consideration for this abstention, is exempt from real estate taxes during the period of reservation."[26]

Indefinite time period.--Twenty-six per cent of the subdivision regulations with site provisions mention reservation without specifying a time limit. Contained in this percentage are several provisions of a voluntary nature, where the time limit presumably would be decided by negotiations between the subdivider and the city.

Similar in meaning to the reservation provisions of a voluntary nature is the following:

> In subdividing property, due consideration shall be given by the subdivider and the Planning Board to the reservation or dedication of suitable sites for schools, parks, and other public uses. (St. Petersburg, Fla., Sec. 6--15)

A number of regulations which required reservations contained a provision which might be paraphrased this way: "If a park, open space or school site, as indicated on an official map or plan adopted by the planning commission lies wholly or partly within the proposed subdivision, the planning commission will (or may) require reservation (or, reservation or dedication) of land for such use."

Reservation provisions which do not state a time period are of uncertain duration but are obviously not permanent. When the owner of the reserved land suffers unreasonable damage in the use of his property, then he is entitled to some sort of relief that would make possible a reasonable yield. At this point, the owner is actually being discriminated against and hence "damaged" because he is being compelled to

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[26] Shirley Adelson Siegel, The Law of Open Space, New York, Regional Plan Association, Inc., Jan., 1960, p. 15.

contribute more to the public welfare than other landowners in similar circumstances.

Since reservation provisions of unspecified duration presently contain no standards for determining what constitutes unreasonable economic injury, the administrator of subdivision regulations has no basis for deciding when reservation must be terminated in order to avoid damaging the property owner. Presumably the determination of injury would be left to the courts. The absence of administrative standards is a weakness in the current provisions, for wholesale use of court action would, of course, be cumbersome and costly. The possibility of using administrative standards defining economic damage is more fully explored in the section on "Acceptability of Reservation Requirements" in Chapter II.

Reservation without a definite time limit is preferable to that having a specific time limit. This is true because the period of reservation should be contingent upon the subdivider's not being "damaged," rather than being based upon a specific time period, which would of necessity be arbitrary.

Specific time periods.--In 15 per cent of the site provisons examined, reservation stipulations with specific time periods were used. All but one of these were in regulations which required compliance.

There was much variety in reservation provisions using a specific time period, but the following is similar in meaning to several and is as "typical" as any of them:

> The Planning Board shall be permitted to reserve the location and extent of school sites, public parks and playgrounds shown on the master plan or any part thereof for a period of one year after the approval of the final plat or within such further time as agreed to

> by the applying party. Unless during such one-year period or extension thereof, the municipality shall have entered into a contract to purchase or instituted condemnation proceedings according to law, for said school site, park or playground, the subdivider shall not be bound by the proposals for such areas shown on the master plan.
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> (Clifton, N. J., Sec. 8, 1)

As pointed out in the previous section, reservations for a specific period of time are open to serious objection because their duration is arbitrary and not related to what is reasonable. One subdivider with a site reserved for a short period of time may be required to bear economic damage which is unreasonable. Another subdivider may be able to reserve a school or park site for a relatively long time without being damaged.

Where specific time periods are used, it would be desirable to grant the subdivider tax relief. This might result in his not being damaged as much as he otherwise would be.

Contribution by Subdivider

The subdivider may be required to help bear the cost of school and park sites. His contribution may take either of two forms or a combination of the two, land dedication and/or a cash contribution.

Dedication.--Of the 123 school- and park-site provisions surveyed, 47 per cent contained dedication provisions. Sixty-three per cent of the provisions of a compulsory nature contained dedication requirements. Some of these left it to the discretion of the commission as to whether dedication or reservation would be employed and to what extent. Twenty-three per cent of the voluntary compliance provisions mentioned dedication.

Dedication might be described as the transfer from private to public ownership of a fee simple title or an easement in land to be used

for a public purpose. Statutes may set up the procedures for accomplishing dedication, in which case the term "statutory dedication" is used, or judicial rules of evidence may be used to imply an offer of dedication and an acceptance, in which case "common law dedication" is involved. The discussion here will be confined to statutory dedication.

Statutes sometimes stipulate that a city automatically accepts dedications which have been proposed in compliance with requirements in subdivision regulations; sometimes not. Unless such a provision is made for acceptance, the city must accept by a positive act; and plat approval by the planning commission thus does not mean city approval of dedications. If approval by the city is called for, it seems only fair to the subdivider to call this to his attention in the regulations, as in the following example:

> When area for park, playground or natural features shall have been required on the Final Subdivision Plan, the approval of said Final Subdivision Plan shall not constitute an acceptance by the Town of such area.
>
> (Milford, Conn., Chap. III, Sec. 5,D)

Procedures have at times called for warranty deeds to be presented to the city, although at present this is usually not the case.

Although the word "dedication" is not often used in regulations with percentage provisions, the compulsory character of such provisions strongly suggests that dedication is the method to be employed. The combination of dedication requirements and percentage provisions was a rather common one.

> The subdividers or owners shall make outright dedication of an area of four percent of the total area of said subdivision which dedication shall be to the City of Pensacola for park uses and for playgrounds.
>
> (Pensacola, Fla., Sec. 6--2)

In Pennsylvania, where court decisions have been adverse to compulsory dedication, one planning department has been considering the idea of encouraging voluntary dedication by relaxing the minimum lot sizes, and hence increasing the permitted density, in those subdivisions designed with adequate recreation area.[27]

One innovation that may prove useful in making dedication more palatable is found in a provision of the Salt Lake City regulations:

> The action of the Planning Commission in exercising this power to compel dedication of public open space shall take place only after a public hearing has been held on the matter. Any person aggrieved by the decision of the Planning Commission may have the decision reviewed by a court of competent jurisdiction.
>
> (Salt Lake City, Utah, Sec. 6813,F)

In one set of provisions which was surveyed and in several others noted in authoritative works, dedication was used in conjunction with cash contribution to a special fund as alternative methods of meeting the subdivider's share of site cost.

The practice of requiring dedication has sometimes been criticized -- a criticism that has seemingly been the result of associating compulsory dedication with percentage requirements, which have produced a host of unusable small parcels. If it is desired to have the subdivider contribute to site cost, the requirements upon him should be put on a cash basis, although it might also be desirable to accept dedications at times.

Site fund contribution.--A number of cities have included within their school- and park-site requirements the provision that a subdivider must make a contribution to the cost of sites. He may be permitted to do so only by cash contribution to a special fund set aside for the purchase

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[27] John J. Matthews, "Proposed Revisions in Allegheny County's Subdivision Regulations--Some Significant Features," Proceedings, Local Government Conference on Subdivision Control, Pittsburg, Institute of Local Government, University of Pittsburg, 1957, p. 67.

of sites, or he may be permitted the option of cash contribution or dedication of suitable land. One source gives this explanation of the "fee" method: "The developer is required to pay a pro rata fee. Money collected goes into a special park and recreational facilities fund, or a school site fund, as the case may be. It is to be used only for the designated purpose and no other."[28]

The need for cash contributions to supplement or to replace dedication has been a compelling one. Since city plan designation cannot anticipate the pattern of subdivision activity, one subdivider might find that a large portion of one of these sites was within his subdivision, while an adjacent subdivision, perhaps a larger one, might contain none of the proposed public land. To require the first subdivider to dedicate a large parcel, while requiring little or nothing of the second, would be manifestly unfair. Thus, master plan designation, coupled with contribution requirements upon the subdivider, makes a cash fee system highly desirable.

The basis upon which the fee requirements are computed varies from city to city. The table on the next page lists some of these cities and shows the basis for the fee charged by each.

An example of cash payment as an alternative to dedication is found in the Monterey Park, California, regulations. The cash contribution alternative consists of $25 for each lot in the subdivision and the ordinance states that

> '...Funds derived from said fees and deposited in ... [the Park and Recreation Facilities Fund] shall thereafter be used and expended solely for the purpose of acquiring and improving park and recreation land and facilities.[29]

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[28] McLean, op. cit., p. 41.

[29] "Public Open Spaces in Subdivisions," op. cit., p. 10.

TABLE 1

Cash Contribution Requirements of Various Cities

City	Site For	Unit of Charge	Amount/Unit
Claremont, Calif	Park	Lot	$35
Colorado Springs, Colorado	Park	Land Value of Net Area	5%
La Verne, Calif.	Park	Acre	$50
Mequon, Wisconsin	School and Park	Residential Lot	$200[1*]
Merced, Calif.	Park	Acre (Gross)	$100
Modesto, Calif.	Park	Acre (Net)[2*]	$100
Monterey Park, Calif.	Park	Lot	$25
Multnomah County, Ore.	Park	Lot	$37.50
Park Ridge, Ill.	School	Lot	$300
Santa Clara, Calif.	Park	Residential Unit	$20
Whittier, Calif.[3*]	Park	Acre	$50

1* $120.00 to the school district and $80.00 to the park and recreation area acquisition fund.

2* exclusive of streets, alleys, or other rights of way.

3* a mutual agreement between city, planning commission, and subdividers.

Regulations of the city of Modesto, California, employ the cash fee method, with provisions adopted in 1952, as follows:

> 'Parks and Playgrounds:
> At the time of approval of the final map of any subdivision of more than four parcels there shall be paid to the City of Modesto, as a fee for such approval, the sum of $100 per acre of subdivided land exclusive of public streets, alleys, or other rights of way shown on such subdivision map. Said fee shall be placed in a special fund to be known and designated as the 'Park and Recreation Facilities Fund.' Funds derived from said fees and paid into said fund shall thereafter be used and expended exclusively for the acquisition and development of park and recreational facilities for the City of Modesto. This fee, or a fair portion thereof, shall be waived by the City Council in all cases where the subdivider has at the time of, or prior to, the filing of the final map dedicated to the City, and the City Council has accepted such dedication, sufficient land to provide adequate recreational facilities for the persons for which the proposed subdivision is designed and provided that the location and size of such area conforms with the master plan for parks and recreation of the City or preliminary plans made in anticipation thereof.'[30]

The Colorado Springs regulations allow the cash fee as an alternative to dedication but differ from the provisions of other cities in that the fee is based upon a percentage of land value. They specify the mechanics of administering the fee requirements, as quoted below:

> ALLOCATION OF LAND FOR PUBLIC SPACES: The owner of the land in each subdivision shall allocate and convey five per cent of the area of the land in his subdivision, exclusive of streets and alleys, for park, playgrounds, school, recreational or similar public purposes, at such location as designated by the City, or at the option of the City, said owner, shall in lieu of such conveyance of land in kind, pay to the City in cash an amount equal to five per cent of the value of the land. If the City and the owner fail to agree on the value of said land, such value shall be fixed and established by the Real Estate Appraisal Committee of the Colorado Springs Board of Realtors. The proceeds of said payments shall be deposited in a separate City account and shall be used only for the acquisition of land for parks, playgrounds, schools, recreational or similar public purposes.
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> (Colorado Springs, Colo., Art.II, Sec. 2E(1))

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[30] "Public Open Spaces in Subdivisions," Supplement, op. cit., p. 2.

The Clintonville, Wisconsin, subdivision-control ordinance has provisions requiring the subdivider to dedicate all school, park, and other public sites shown on the master plan or official map. The subdivider is then reimbursed for that portion of the site not necessitated by the load he is creating on the school and park facilities. Such reimbursement is made from a reserve fund which includes appropriations made by the city and cash contributions by other subdividers not having designated sites within their plats. Since the basis for land or cash contributions was not specified, it is evidently determined administratively.[31]

The Mequon, Wisconsin, regulations require fees from subdividers and specify the basis for the fee, which is apportioned to the school district and the recreation area acquisition fund. At the option of the planning commission, the subdivider may dedicate land instead of the required payment. These provisions also contain a reservation requirement for the portions of needed sites which the subdivider is not required to contribute. Because of the unique procedures in the Mequon fee method, its provisions are quoted below:

> In order that adequate open spaces and sites for public use may be properly located and preserved as the community develops; and in order that the cost of providing the public school, park, and recreation sites and facilities necessary to serve the additional families brought into the community by a subdivision development may be most equitably apportioned on the basis of the additional need created by the individual subdivision development, the following provisions are established.
> A. Reservation of Potential Sites.
> 1. In the design of the plat, consideration shall be given to the adequate provision of land and correlation with such public sites or open areas.
> 2. Where it is determined by the plan commission that a portion of the plat is required for such public sites or open spaces, the

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[31] Information Bulletin, File No. 419, Madison, Wis., League of Wisconsin Municipalities, Jan. 2, 1959, p. 2.

subdivider may be required to reserve such area for a period not to exceed three years, after which the city shall either acquire the property or release the reservation.

B. Dedication of Sites.

1. Within the corporate limits of the city, where feasible and compatible with the comprehensive plan for the development of the community, the subdivider shall provide and dedicate to the public adequate land to provide for the school, park, and recreation needs of the subdivision.

2. The amount of land to be provided shall be determined on the basis of an amount equal in value to $200.00 per residential lot created by the subdivision....

C. Proportionate Payment in Lieu of Dedication.

1. Where such dedication is not feasible or compatible with the comprehensive plan, the subdivider shall in lieu thereof pay a fee of $120.00 per residential lot created by the subdivision to the school district or districts in which the plat lies, on the basis of proper apportionment between such school districts, and $80.00 per residential lot created by the subdivision to the park and recreation area fund of the city.

2. Such fees shall be used exclusively for immediate or future site acquisition or capital improvement.

...

7. Payment may be in a lump sum or 50% paid at the time of plat approval and the balance to be paid within one year, such deferred payment to be guaranteed by surety bond or other satisfactory financial guarantee to the city.

(Mequon, Wis., Sec. VIII)

The cash contribution provisions in land subdivision regulations seem, in general, to have the following inadequacies:

(1) Some of them do not relate to reservation requirements, which will often be needed to preserve site areas in excess of contribution requirements.

(2) The extent and location of the total site areas to be preserved are sometimes determined administratively. The subdivider should not be asked to go through the platting process blindfolded, not knowing what the requirements will be until he submits a plat for approval. The areas and approximate locations of public sites should be set down on a planning instrument of some kind, whether it be a master plan, official map, or some other plan, and be available for public examination.

(3) It will probably not be possible to bring requirements relating to master-plan designations into harmony with contribution requirements. That is, at any given time, the value of the sites required may exceed the money or land contributions made by subdividers. Even if a reservation period is used, the money might not be available when needed. Therefore, it would appear that provision should be made for the city as well as the subdividers, to contribute to the site acquisition fund if necessary. If other public agencies besides the city are involved in the ultimate ownership of sites, they should either contribute to the fund or reimburse the city for its contributions.

Informal Agreements

Cities sometimes make informal arrangements with subdividers to preserve land for schools and parks. Such arrangements are characterized by policy determinations, rather than by ordinance. Modesto, California, provides an example: "...an arrangement has been worked out with the subdividers of land outside the city limits and in line for annexation. In relation to the annexation program the city council has established as a matter of policy (not yet by ordinance) that the city will purchase and reserve for park development a suitable portion of land within any tract which successfully completes annexation proceedings, provided such tract is available. The location of such reserved land must meet with the approval of the Director of Parks and the Planning Director."[32] The city council of Whittier, California, the planning commission, and the subdividers also have an agreement "...that at the time of annexation or subdivision of land, approximately 5 per cent of the total area being

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[32]"Public Open Spaces in Subdivision," Supplement, op. cit., p. 2.

subdivided, or tentatively the amount of $50.00 per acre shall be set aside for park and recreational use. This plan has been in practice since November, 1949."[33] Wichita Falls, Texas, has followed a procedure of allowing cash contributions in lieu of dedication for small subdivisions (less than 2-1/2 acres), although such an alternative was not part of the platting regulations and hence not compulsory.[34]

Informal agreements cannot be recommended, as they put the subdivider into a bargaining position, where he ought not to be when the public welfare is at stake. Also, it likely that some subdividers will not participate in the agreements and will not provide adequate public sites, thereby causing added expense to the city and ill will on the part of their fellow subdividers who have followed the city's wishes.

Critical Summary of Methods of Obtaining School and Park Sites

The city or other public agency may be able to acquire sites immediately upon plat filing, or it may be necessary to reserve them for a time pending acquisition. In order to acquire the sites needed for new subdivisions, the city may find it desirable to require the subdivider to contribute either land or money.

Reservations remain in effect for either a specific or an indefinite period of time.

Although the latter type as it is now used is subject to some criticism, it has a number of advantages over the former. A specific time period, which is of necessity arbitrary, has no relationship to the reasonableness of the requirement upon the subdivider. An indefinite time period recognizes that a reasonable time period may not be

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[33] Ibid.

[34] George D. Butler, "Land for Recreation," Recreation, Oct., 1954.

the same in every case and makes termination dependent upon economic damage to the land owner. Damage should be defined in the reservation provisions so that the administrator of the subdivision regulations, rather than the courts, would be able to determine when each reservation must be terminated. If the subdividers are required to contribute to site cost, the cash contribution of each subdivider should be computed upon the same basis (lot, acre, percentage of raw land value, etc.). Then, if a subdivider has in his plat a school or park site or portion thereof which is acceptable to the planning agency, he should make his fair contribution and be reimbursed for any excess.

Summary of Survey Findings

Fifty-one per cent of all subdivision regulations adopted or in the process of adoption that were inspected by the author contained provisions dealing with the dedication or reservation of sites for schools and parks. The variety in these provisions is astonishing. Because practically every set of provisions was different in some respect from all the others, it was soon discovered that no set could be presented as "typical."

In 1941, H. W. Lautner published his survey of 284 subdivision regulations. He stated, "...One hundred and three cases were found to contain some form of general regulation of public open spaces. In most cases the requirements are extremely vague, seemingly indicating a considerable uncertainty as to the extent to which requirements are enforceable...."[35] The present survey indicates that the use of vague phraseology

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[35]Lautner, op. cit., p. 178.

is still a characteristic. For example, many times the method of providing the required spaces is by dedication or reservation, with nothing whatsoever to guide the administering agency as to how much land, if any, the developers may be required to dedicate or reserve. Another frequent requirement is that the site must be "suitably" located and of "appropriate" size.

Mr. Lautner found in his survey that "Primary concern ... is given to recreational open spaces, generally designated as parks and playgrounds,"[36] but that cities many times also provided for school sites and a few times even included such public uses as fire stations, churches, automobile parking spaces, etc.. In the present survey, nearly twenty years later, it was found that the majority of provisions no longer apply only to recreational areas. Of the 123 regulations containing school- and park-site provisions, 69 per cent applied to schools, parks, and playgrounds, 30 per cent applied to recreational spaces but not to schools, and one per cent (one case) applied only to schools. Twenty-eight per cent included public facilities other than schools, parks, and playgrounds.

All school- and park-site provisions may be divided into two very broad classes: (1) those which ask consideration of the areas for these public uses and (2) those which require dedication, cash contribution, or some sort of reservation for public acquisition. Thirty-nine per cent of the cases reviewed fall into the former class and 61 per cent into the latter. The variations within each of these classes are complex but generally the provisions deal with (1) the size and location of sites

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[36] Ibid., p. 177.

and (2) the methods employed for making them available for public use.

It was found that the most common method for determining the approximate size and location of a school or park site was that of relating the provisions in the subdivision regulations to the community's master plan.

Percentage provisions, another method of specifying size of the public site, were second in frequency of use. Some of these required that a specific percentage be met, while others stated that the figure given was not "arbitrary" but was simply a suggestion; and in some cases it was difficult to tell whether the provision was compulsory or not. The percentage figures ranged from 3 to 12. Net percentage (excluding streets) was specified in some cases, gross in others.

A number of regulations leave considerable discretion to the planning commission in determining the size and location of sites. They do so by providing that the commission may require "proper" size and location, that the areas shall be of "reasonable" size, and that the sites shall be "suitable" for their intended uses. This type of provision ran a very close third to the percentage provisions.

In some instances, the planning commission has been directed to consider the character of the development in determining dedication or reservation requirements -- whether the land is to be residential, commercial, or industrial, and if residential, what the expected density of population will be.

A few regulations contain the provision that population standards may be used to determine the size of sites.

Another provision dealing with size and location encourages or requires the combining of open spaces in one subdivision with similar spaces in an adjoining subdivision.

The requirements for public open spaces and school sites may sometimes be removed or reduced if adherence would produce "undue hardship" or if, owing to existing facilities, there is no need for additional open space.

Outright dedication to the city is the most frequently specified method for setting aside sites for public use. Practically no dedication provisions were found which were alike in wording.

A second method for preserving the integrity of sites is reservation for acquisition by the government. The length of time that such a reservation is required was sometimes specified, ranging from 30 days to 5 years; in about twice as many cases, it was not specified.

Just coming into use are provisions requiring a cash contribution of the subdivider. These, usually an alternative to compulsory dedication, help to provide funds for the public acquisition of sites. Only 4 provisions of this type were found in the survey; but a number of others were found in reference materials, most of them in regulations of California cities.

CHAPTER II

JUDICIAL ACCEPTABILITY OF SCHOOL- AND PARK-SITE PROVISIONS

In framing provisions to effectively preserve the integrity of school and park sites and in formulating enabling statutes to authorize them, it is necessary to be aware of the acceptability of present provisions. Unfortunately, the courts have decided few cases dealing directly with the site provisions found in subdivision regulations, and this death of precedent makes it difficult in most localities to compose provisions with confidence in their judicial soundness. However, from the few decisions that have been made, an idea can be gained of some inadequacies which would likely result in unfavorable decisions in the future.

The cases presented all deal with the methods used to obtain sites once size and location have been determined. The courts have apparently not questioned the equity or the size of subdivider contributions, either in land or cash, but rather, whether the requirements were capable of being administered uniformly and were supported by statutory authority. The provisions which the courts examined dealt with (1) reservation for public acquisition, (2) compulsory dedication of land by the subdivider, and (3) cash contribution requirements upon the subdivider. They are discussed in the sections following.

Acceptability of Reservation Requirements

As stated in Chapter I, a substantial number of school- and park-site provisions contain reservation stipulations. Yet, the courts have

provided almost no cases dealing directly with reservations either for specified or indefinite time periods. Since, logically, there would appear to be a reasonable doubt as to the constitutionality of restricting property against structural improvements when they are needed to provide a reasonable economic return from the use of a parcel of land, it is indeed surprising that more cases have not arisen.

A case was found which dealt with reservation per se rather than with the time length of reservation. The ordinance involved permitted reservations in areas "not entirely built-up," in accordance with a general plan for parks and playgrounds, and hence was not a subdivision control ordinance. The decision, however, might well have been the same had subdivision regulations been involved. The statute supporting the ordinance specified a three-year period of reservation and provided that improvements built upon reserved land during this period would be forfeited should the land be taken for park purposes. The court, in declaring a "taking" of private property without compensation, made a distinction between street reservation and park-site reservation. It stated that the reservation of streets, "which are narrow, well defined, and absolutely necessary," was itself of doubtful constitutionality and that the principle of reservation should not be extended to parks, which are desirable, but not necessary. (Miller v. Beaver Falls, Supreme Ct. of Pa., 1951, 368 Pa. 189,82 A.2d 34)

Specific time period.--No cases were found which tested the legality of site reservation requirements with specified time limits.

Indefinite time period.--There are no decisions given in the regional U. S. court reporters (Atlantic, Northeast, Southwest, etc.) upon reservation of sites for an indefinite time. One case relating to an

indefinite-time reservation has been tried in Puerto Rico. The planning board had approved the preliminary plat, the subsequent Plans of Construction, and a plan of partial subdivision, all of which showed areas reserved for park and school purposes, in accordance with the stipulations of the board. About two months after the partial subdivision approval, the subdividers asked the Board to set aside the orders reserving the school and park sites on the grounds that, since more than a year had elapsed since preliminary plat approval, the government had not proceeded with condemnation within a reasonable time. "The court found...that more than a reasonable time had not yet elapsed when the Board was asked [by petitioners] to set aside its earlier orders."[1]

Perhaps, in order to place reservation provisions upon a more sound judicial footing, it would be well to use an indefinite reservation period but to incorporate within the provisions the "reasonable return" principle used in official maps, making the reservation period contingent upon the subdivider's not suffering unreasonable economic damage. When, according to administrative standards, damage became imminent, some form of relief would be granted or the reservation would be terminated and the city compelled to purchase at that time.

One provision that could be used to define "damage" to the landowner would be a stipulation that the reservation would terminate upon the sale of all lots within the plat, the theory being that the subdivider has not suffered economically until he has no more lots to sell. In addition to the judicial soundness of such a provision, it would contribute to better city planning for the following reasons. (1) If the developer is selling lots to individuals rather than constructing homes

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[1] Zoning Digest, Chicago, American Society of Planning Officials, Vol. 2, Oct., 1950, p.158. (Felipe Segarra Serra and Eduardo G. Gonzales v. Santiago Inglesias, Supreme Ct. of Puerto Rico, 70 Puerto Rico Reports)

on them, it may be some time before all lots are sold; and the reservation period would likely be a lengthy one, allowing the city more time to accumulate the funds needed for purchasing sites than the courts would be likely to allow in a specific-time-period reservation. (2) It is difficult to predict the rate of development of a subdivision. The proper time for building schools and equipping parks is therefore highly uncertain. A requirement that all lots be sold before purchase of school and park sites by the public agency becomes necessary would tend to insure a population load which would warrant purchase of sites, thereby increasing the likelihood of using public funds in the more rapidly growing areas, where they will do the most good.

Reservation requirements which must be terminated upon the occurrence of unreasonable economic damage are customarily used to preserve designated highway rights-of-way and public sites in official maps. An analogy between reservations in an official map and in subdivision regulations is a logical one. Since, therefore, there exists favorable judicial precedent for indefinite reservation in official maps, there is reason to believe that the courts would also uphold them in subdivision regulations. The police power reservation in an official map ordinance of land for future streets and widenings has been upheld by the court in Town of Windsor v. Whitney (Conn., 1920,111 A. 354). The case of Headley v. City of Rochester (Ct. of Appeals, N. Y., 1936, 5 N. E. 2d 198) contained a favorable opinion upon the state statute, which extended official map protection to parks. The court declared that mere lines on a map showing lands reserved for ultimate acquisition by the city did not constitute a "taking." "Since the plaintiff's alleged

grievance is that he has been deprived of his property without compensation, the grievance becomes illusory if it does not appear that damage has been done to him by the city's acts."

Although the reservation provision under discussion, whether used in official maps or subdivision regulations, would be extinguished when the property limitation became too severe, the landowner may be damaged to some extent by regulatory devices without the necessity for compensation. The very nature of the regulation will many times result in plucking a few of the sticks from the so-called "bundle-of-rights," and justice demands that the courts weigh the interests of the community against the injury to the individual. However, "...it is elementary that enforcement of uncompensated obedience to a regulation passed in the legitimate exercise of the police power is not a taking without due process of law."[2]

Acceptability of Dedication Requirements

Compulsory dedication provisions have been described by the Director of Research of the American Society of Planning Officials as of uncertain legal status in some states, since there are so few court cases upon them.[3] John W. Reps, writing in a 1955 issue of the Cornell Law Quarterly, believes that "Under present enabling acts

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[2]Constitution of the U. S. of America, Revised and Annotated--Analysis and Interpretation, Washington, Legislative Reference Service, Library of Congress, U. S. Government Printing Office, 1953, p. 983.

[3]Mary McLean, "Filling Neighborhood Needs, Recreation and School Sites," Proceedings, Local Government Conference on Subdivision Control, Pittsburg, Institute of Local Government, University of Pittsburg, 1957, p. 41.

courts are not likely to uphold compulsory dedication of parks."[4] (Emphasis added.) In 1952, the editors of the Harvard Law Review stated that compulsory dedication based upon adequate authority in enabling acts has generally been upheld by the courts. Since Mr. Reps's opinion is of later date than that expressed in the Harvard Law Review, a comparison of the two leads to the conclusion that Mr. Reps did not consider most enabling acts to be adequate. The logical conclusion from these authoritative viewpoints is that the key to judicial acceptance of dedication lies in an adequate grant of authority in a state enabling act.

Two cases are presented below, one in which the court held that the applicable statute did not authorize dedication requirements and one in which the statutory authority was sufficient. In both these cases, the decisions seemed to hinge entirely upon the adequacy of statutory authority.

A case decided in 1960 dealt with a dedication requirement which was not authorized by statute. Because of the economic compulsion upon the subdividers to get their plat approved, the court held that they were entitled to reconveyance of the lots, even though they had not sought relief when the requirement was imposed. Said the court, "The plat act of 1929 gave the city no power to require, as a condition prerequisite to the approval of plats, that one lot in each subdivision should be conveyed to city." (Ridgemont Development Co. v. City of East Detroit, Supreme Ct. of Mich., 1960, 100 N. W. 2d 301) The dedications were not shown on the plat, and hence it may be assumed that there were no rights vested in lot purchasers.

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[4] John W. Reps, "Control of Land Subdivision by Municipal Planning Boards," Cornell Law Quarterly, Vol. 40, No. 2, Winter, 1955, p. 247.

In an earlier case the court upheld a decision of the planning board to refuse a plat until sufficient park area had been dedicated.

The court (in Matter of Lake Secor Development Co. v. Ruge, Supreme Ct. of Westchester Co., 1931, 252 N. Y. S. 809) commented thus upon the New York enabling statute:

> The section [of the Town Law] under which the planning board presumed to act read as follows: 'Before the approval of the planning board of a plat showing a new street or highway, such plat shall also and in proper cases show a park or parks suitably located for playground or other recreation purposes. In approving such plats, the planning board shall require that...the parks shall be of reasonable size for neighborhood playgrounds or other recreation uses. In making such determination regarding...parks, the planning board shall take into consideration, the prospective character of the development, whether dense residence, open residence, business or industrial.' [Town Law, Sec. 149-n; See McKinney's Consolidated Laws of N. Y. Annotated, Book 61, Sec. 277, p. 538.]

In interpreting the statute, the court said,

> It is the plain purpose [of the Town Law] ...that the board shall have power to determine...the area to be divided [sic] to park and recreational purposes.

Continuing its pronouncement, the court made clear its approval of the dedication requirement and by its rebuttal of an argument of the plaintiff, strongly implied that a consideration of the "character" of the development applied only to the subdivider's development and that even though Putnam County as a whole had a park-like character, the landholders in plaintiff's subdivision would not be free to make recreational use of surrounding areas by trespassing upon them. Commented the court:

> The demand of the planning board for additional park land is reasonable. The argument that 'all Putnam County is a park' advanced by petitioner is without merit. The apparent purpose of the petitioner is to establish a summer colony. It must dedicate to public use sufficient area to provide for the ultimate use to be made of this plat. It argues that the residents there can trespass upon other lands for recreational purposes. The mere statement of the proposition is its answer.

Acceptability of Cash Contribution Requirements

The two court cases and the opinions of the various writers presented below, point out that unfavorable decisions upon cash contribution requirements have resulted from the courts' view that the cash payments actually constituted a tax and that there was no statutory authority to impose such a tax.

The judicial status of the fee method in some of the states was given in a 1957 address by the Director of Research of the American Society of Planning Officials.

> In 1955, the municipalities of Park Ridge and Palatine, Illinois--which are suburban communities near Chicago--were requiring builders to pay $300 a house, the money put into a special school fund. The state's attorney general ruled that Illinois cities did not have this authority under the state constitution.
>
> A similar ruling applies to counties in the state of California. However, ... it has not affected California cities.
>
> The Michigan attorney general rules [sic] a few months ago that compulsory dedication of land for schools and parks, and the alternative of a fee collection, were both unconstitutional in that state.
>
> Despite these rulings I would not by any means say that the fee method of acquiring school and park sites is out of the picture....
>
> And the most recent development is a proposal that the state of Wisconsin adopt legislation that would specifically permit land developers to pay certain sums for park and playground purposes.[5]

In a book published this year (1960), Shirley Adelson Seigel gives this opinion about fee provisions:

> The legality of such a cash condition in the absence of specific enabling legislation has been the subject of some controversy and of divided opinion in the courts. Oregon took the liberal view, allowing the regulation; California contra. The issue has turned largely on whether such a requirement was really a revenue measure, hence requiring an express statutory basis. ...in 1954, the New York Comptroller's Office issued an opinion broadly construing the Town Law to authorize such a condition.[6]

In a 1958 case, the 1954 opinion of the New York Comptroller was criticized. The case involved a planning board requirement that as a

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[5] McLean, op. cit., p. 42.

[6] Shirley Adelson Siegel, The Law of Open Space, New York, Regional Plan Association, Inc., Jan., 1960, p. 17.

condition precedent to the issuance of building permits, the following requirement, among others, be met:

> (C) Pay to the Town of Islip the sum of $900 (at the rate of $50 per building lot) to be allocated to the Town Park Fund.

The court commented that:

> It appears that condition '(C)' has been imposed by the planning board based upon the provision of section 277, Town Law [inapplicable, because plat approval had already been granted under this section] for the inclusion of a park for playground or other recreational purposes in proposed plats and a tortured opinion of the Comptroller which has not been published among his opinions. (Reggs Homes v. Dickerson, Supreme Ct., Suffolk Co., 1958, 179 N. Y. S. 2d 771)

A 1957 California case resulted in an opinion that cash contribution constituted a tax and was not authorized by the applicable statute, the Subdivision Map Act. The ordinance provision in point is quoted below:

> 'That at the time of approval of the final map of any subdivision or record of survey there shall be paid to the City of Upland, as a fee for such approval, the sum of Thirty and no/100 dollars ($30.00) per lot for each lot in said subdivision or record of survey. Such fee shall be placed in a fund with the City Treasurer of the City of Upland to be known and designated as 'Park and School Site Fund.' Funds derived from said fees and deposited in said fund shall be used and expended solely for the purpose of acquiring park and school sites in the City of Upland.'

The Act authorized the adoption of "local ordinances," which related to design and improvement provisions, and the court's interpretation of the Act's definitions for "design" and "improvement" did not permit the inclusion of the site fund. In the following portion of its opinion, the court notes the absence of a definite relationship between the required fee and the site needs of a neighborhood as determined by its "character" and thereby shows its reasoning in regarding the fee as a tax.

> It rather clearly appears that these fee provisions are fund raising methods for the purpose of helping to meet the future needs of the entire city for park and school sites and drainage facilities, and that they were not reasonable requirements for the design and improvement of the subdivision itself. It seems rather obvious that this fund raising method is not related to the character of local and neighborhood planning and traffic conditions.
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> (Kelber v. City of Upland, Calif., District Ct. of Appeal, 4th District, 1957, 318 P 2d. 516.)

If there had been an enabling statute which granted cities and counties the right to charge fees for school and park sites to serve a neighborhood and which stated the police power purpose the fees would fulfill and the necessity for them, it seems reasonable to assume that the attitude of the court would have been different. It might have upheld the fee provision as a police-power measure, instead of discarding it as a revenue measure.

The decision in a 1958 Oregon case upheld a site-fund contribution requirement. The court denied the plaintiff's contention that cash contribution was actually a tax and also refused to question the amount of the fee, holding that it was not excessive nor unreasonable. Oregon's enabling statute for subdivision control was held to grant the necessary authority for a provision calling for dedication or cash contribution.

The provision in question was a part of Multnomah County's subdivision regulations and asked for dedication or a payment of $37.50 per lot, to be expended on parks located within one-half mile of the subdivision. Oregon's enabling statute "...adopted in 1955, authorizes the governing body of a county or city to adopt standards for the approval of plats of subdivisions. Such standards may include requirements...for facilitating adequate provision of...education, recreation,

or other needs."[7] In recognizing dedication or cash contribution as meeting police power objectives and necessary therefor, the court said:

> 'It [property provided and moneys paid for park purposes] is intended as a control on 'unbridled' development; is addressed to the making of provision for the public welfare, etc., when subdivisions are developed with the creating of added population concentration, children, etc., thus reasonably necessitating such action for accumulation of property or funds for park, playgrounds, etc., in the area affected.'[8]

Conclusions--The Judicial Future of Site Provisions

There are extremely few court decisions dealing with school-and park-site provisions, and this lack of precedent makes prediction of the courts' attitude toward these provisions in most states extremely difficult, if not impossible. However, this should not discourage states and localities from using the existing types of provisions or from developing innovations that would better accomplish the preservation of sites. John Reps expresses a similar viewpoint: "The law of subdivision control is still in its infancy. The limits of control authority are still largely undetermined. Municipalities should not hesitate to experiment with untried or legally untested methods of plat review if such methods appear to be in the public interest."[9]

According to authoritative opinions and the court decisions examined, the judicial attitude upon current and future site provisions will be based upon (1) the reasonableness of requirements (balancing

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[7]Walter H. Blucher, "Planning Legal Notes," Newsletter, Chicago, American Society of Planning Officials, Apr., 1959, p. 35.

[8]Ibid.(Haugen v. Gleason, Circuit Ct.,Multnomah Co.,Ore.,1958 No. 245-683, not reported)

[9]Reps, op. cit., p. 280.

of economic damage to the individual against public need), (2) the adequacy of administrative standards (capability of applying the subdivision regulations uniformly), and (3) the adequacy of statutory authority (grant of power from the state).

Reasonableness seems to have been the basis upon which the courts decided the previously discussed cases on reservation requirements. It might be conjectured, however, that the courts would not so closely examine the reasonableness of a requirement if there were ample authority for the requirement in statute and ordinance.

The decisions in cases dealing with both dedication and fee contributions apparently turned on whether adequate authority had been vested in the local government by state enabling statute. All that would appear necessary to obtain court approval of dedication and cash contribution requirements in those states where the courts have thus far found them unacceptable for this reason would be the passage of legislation specifically authorizing their use.

A publication of the American Society of Planning Officials has listed reasonableness of public open space requirements and their conformity with a city plan as factors which will influence the attitude of the courts in the future. Recommendation of city plan conformity apparently is a recognition of the need for standards which will permit uniform administration.[10]

Commenting upon the need for administrative standards, the recent book by Siegel states that "Clear and uniform standards in subdivision regulations are naturally called for, which would put developers

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[10] "Public Open Spaces in Subdivisions," Planning Advisory Service Information Report No. 46, Chicago, American Society of Planning Officials, Jan.-Feb., 1953, p. 18.

on notice as to the circumstances under which such contributions should be made, and in what measure. The existence of such standards, linked with the provision for public hearings and a master plan, would undoubtedly have weight with the courts in future test cases."[11] Platting statutes are now more complex and demanding than in the early days of platting control, when nothing more than surveying accuracy and map uniformity were required; and thus the courts have become more exacting in their review of administrative standards and procedural safeguards.[12]

In speculating upon the courts' attitude toward new or untested provisions, the following opinions are encouraging. The editors of the Harvard Law Review (1952) state that subdivision regulations "...generally have been upheld so long as planning boards have stayed within the limits of their statutory authority."[13] And, from a publication of the Wisconsin Law School, comes the following: "...it appears that, once the statutory authority has been clearly spelled out, the limits on what conditions can be required for approval of a plat are very broad."[14] The state, as sovereign holder of the police power, dispenses this power to its political sub-units through enabling statutes. The police power, although dynamic in character and therefore impossible to define precisely, has been judicially recognized as available for the promotion of the public health, safety, morals, and welfare. The United States Supreme Court and courts

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[11] Siegel, op. cit., p. 17.

[12] Frank E. Horack, Jr. and Val Nolan, Jr., Land Use Controls, St. Paul, West Publishing Co., 1955, p. 203.

[13] Harvard Law Review, Cambridge, The Harvard Law Review Association, Vol. 65, 1952, p. 1233.

[14] Marygold Melli, Subdivision Control in Wisconsin, Madison, Wis., University of Wisconsin Law School, Mar., 1953, p. 11.

in a number of states have held that the public convenience and the general prosperity are also legitimate objectives of the police power. The court in Miller v. Board of Public Works (Supreme Ct. of Cal., 1925, 195 Cal. 477,234 P. 381) stated that "...the modern view freely and fully accepted by most of the courts is that municipal police power may be involved for the promotion of the general welfare in the broad sense of furthering the public convenience and public prosperity of the community." These latter two objectives are of particular importance when applied to the setting aside of school and park sites because of the substantial economies to the community of preserving sites until they can be acquired.

In summary, it may be said that police-power objectives seem sufficient to sustain reservation and contribution requirements upon the subdivider and that no reason for judicial difficulty can be seen if there is an adequate grant of the police power by the state, if the requirements are not unreasonable and hence repugnant to the constitutional restraint against "taking" private property, and if there are standards sufficient for uniform administration.

CHAPTER III

RECOMMENDATIONS

Chapter I analyzed provisions of land subdivision regulations for obtaining school and park sites, evaluated the effectiveness of each type of provision, and noted the extent of its usage. In that chapter, results of the survey of existing provisions give a conceptual framework of the kinds of provisions needed to accomplish the objective--to obtain school and park sites through subdivision control. Chapter II investigated the attitude of the courts toward existing site provisions, as shown by the few cases that have been decided. From an analysis of these decisions and a consideration of the opinions of writers on the subject, the factors which will probably influence future decisions on new or untested provisions were presented.

Since the conceptual framework has been given and the attitude of the courts examined, there remainsthe task of recommending the types of provisions that will best accomplish the stated objective. The site provisions which a community includes in its subdivision regulations should be in harmony with the particular housing and planning policies of that community, and hence no "best" provisions have been composed.

Presentation of Recommendations

The recommendations contained within the succeeding sections follow as much as possible the organization of Chapter I and are discussed within three broad divisions of subject matter: (1) size and

location of the site, (2) preservation of the site for its intended use, and (3) the distribution between city and subdivider of the costs of site acquisition.

Provisions Dealing with Size and Location

The public agency charged with reviewing proposed plats for compliance with subdivision regulations, and hence with the school- and park-site provisions within them, will be concerned with obtaining sites which are properly located and of adequate size. In order for this agency to administer the site requirements in a fair and uniform manner, it should be guided by standards dealing with size and location. Implementing community plans, official and unofficial.--The general location and size of public sites (including sites for parks, schools, and playgrounds) should be predesignated on a map or plan of some sort so that the subdivider has prior warning of reservation or contribution requirements. This may be a community plan which is not officially adopted by the legislative body, or it may be an official map, which is adopted by ordinance. No advantage can be seen in making the map or plan itself part of the subdivision regulations; and this might be a disadvantage, for it could require action by the legislative body in amending the subdivision regulations that would otherwise be unnecessary. The sites can be more logically selected, of course, if they are included within a comprehensive land-use plan which allocates areas for all the various public and private uses of land within a community (retail commercial, public open spaces, single-family residential, etc.).

Some administrative discretion, as a supplement to the community plan designations will be necessary in making more precise the general boundaries of school and park sites shown on the plan.

It should be recognized that public agencies other than the city, such as school boards and park authorities, may have the authority to make final site determinations. Thus, the city's planning agency, which is responsible for the preparation of the land-use plan and for the recommendation of measures to achieve its realization, should consult with each of these agencies in the selection of sites. Provided that agreement can be reached between the planning agency and the public agency responsible for site acquisition, the planning agency should seek to obtain an official approval of the site by the responsible agency. If agreement with the responsible agency cannot be obtained or if official approval of the site cannot be secured, the planning agency should nonetheless designate the site on a community map or plan. When the need for a site to serve a certain area becomes apparent to the responsible agency, the reserved site within that area may well be acceptable, since it may be the only suitable one available.

Even though community-plan designation of school and park sites is desirable, some cities may not have progressed in their planning to the point where they feel justified in making such a designation. They may have no designations at all or may have them only within certain sections of the city or planning area. Rather than forego the reservation or acquisition of adequate sites, the city should determine the size and location of these sites at the time of preliminary plat filing. Since the subdivider has not been forewarned of site locations and since they are not based on standards which have been known to the public, the city should attempt to secure them by voluntary negotiation with the subdivider.

The use of population standards.--The planning agency or other public agency involved in the selection of school and park sites should use population or density standards in determining the size of public sites shown on the community plans or maps. Population standards, based on the total number of persons, may be preferable for determining the size of sites for schools and for playfields and playgrounds (active recreation). Density standards, based on the number of persons or families per unit of area, may be the better of the two for use in determining areas devoted to passive recreation--parks with benches and walks, etc. In either case, the size of the particular community, the density of its residential development, the income characteristics of it population, and perhaps other factors should influence the particular standards which the agency uses. Although the standards set up by the National Recreation Association and by school authorities may serve as a guide, the community may find it advantageous to set up its own standards.

Provisions Dealing with Preservation of School and Park Sites

To preserve the integrity of sites and assure their availability when needed for schools and parks, it is necessary that they either be acquired immediately upon final plat approval or that they be reserved for later acquisition. The immediate or later acquisition must be either by dedication or purchase. The city may bear the entire cost of the site, or the subdivider may be required to bear all or part of the cost.

The planning agency should attempt voluntary, rather than compulsory, reservation of sites in those cities which have no standards

(such as master plan designation) to adequately guide their determination of the areas needed.

Immediate public acquisition.--Although public acquisition of school and park sites might involve both land dedication and cash contributions by the developers, some of the cost may be borne by the city, or other public agency. For that reason, the contributions from both city and subdivider must be available at the time of plat filing, if immediate public acquisition of sites is to be possible. Immediate acquisition would call for a special public fund into which would be deposited moneys appropriated by the city and contributed by subdividers to be used exclusively for site purchase and capable of being expended upon administrative authority according to predetermined policy. If the city made adequate contributions to the site acquisition fund in addition to, or in place of, contributions made by subdividers, and if the sites as designated on the community's master plan or otherwise were of reasonable extent and location, site acquisition could possibly keep up with subdivision.

Reservation pending subsequent acquisition.--It may prove impossible or impractical to purchase all needed school and park sites immediately upon the filing of the final plat. Instead, it may be necessary to reserve the proposed sites for subsequent public acquisition. This should be done by reservation for an indefinite time contingent upon the subdividers not suffering unreasonable economic injury. Standards which define unreasonable injury or damage to the subdivider can be formulated and might take the form of a provision that reservation will be terminated upon the sale of all lots within a subdivision.

Subdivision regulations should state that the city must purchase the school or park site when damage forces the termination of reservation.

By that time, the subdivider will have lost most of his rights in the reserved site due to the vested rights which have accrued to the purchasers of his lots by virtue of site designation on the plat.

The subdivider should not only be assured that he will be reimbursed but should also know how much he will be reimbursed. The subdivider and planning agency should agree upon the amount of payment at the time of plat approval, based upon the value of land at that time.

In some communities, it may be desirable to obtain voluntary reservation of school and park sites through negotiations with the subdivider at the time of preliminary plat review. This would hold true in those cities which are unable to designate sites either in the entire city or planning area or in parts thereof due to the lack of planning information. One subdivision designer, Mr. Willard C. Byrd of Atlanta, Georgia, suggests a method of voluntary reservation which in his experience has proved workable. At the time of preliminary plat review, the subdivider and planning agency agree on the area to be reserved. This area is laid out in lots as part of the overall subdivision, so that in case the city does not acquite it for school or park purposes, it can be efficiently used for building lots. Then, as the subdivider desires to develop certain portions of the preliminary plat, he submits final plats of these portions to the planning agency for approval, leaving the reserved areas for inclusion in the final plat of the last portion to be developed. At that time, a desision on the reserved site has to be made.

Policy Determination on Site Cost Contribution

Recommendations will not be made as to the extent, if any, that the land developer should participate in the cost of obtaining school and park sites. The philosophy of whether or not contributions should be required involves pros and cons on "fairness" which are not capable of being resolved into the clear-cut preferability of one alternative over the other. The city must make a decision, however, as to whether or not the subdivider will be required to contribute.

If the developer is required to contribute, he should contribute cash. This is simpler than having a combination of land dedication and cash. A site acquisition fund, into which the cash contributions would be placed, is highly desirable.

It will be desirable to set up the site acquisition fund on a revolving fund basis, an increasingly popular method used in highway right-of-way acquisition. The city, for budgetary control purposes, may desire to appropriate money for particular capital improvement projects which include land purchase cost and to reimburse the fund when money is appropriated for a particular project. Also, the city may want to purchase sites for other public agencies, such as school boards and park authorities, and to accept reimbursement by these agencies when they are ready to use the site.

Summary of Recommendations

Following is a summary of the recommendations presented in the foregoing discussion:

(1) The general size and location of school and park sites to be preserved for public acquisition should be shown on a community plan.

Administrative determination of precise boundaries should be made at the time of plat approval.

(2) Immediate acquisition of sites may be possible in some localities and is the recommended procedure.

(3) It is recommended that the reservation of sites that cannot be acquired immediately should be for an indefinite time period, to be terminated upon the occurrence of unreasonable economic damage to the land owner, as determined by established standards. At that time the city should be compelled to purchase the site at the price agreed upon at the time of plat approval.

(4) A special fund is recommended, into which moneys would be paid by the city and subdividers and which would be specifically designated for school- and park-site purchase. It is further recommended that such a fund be set up on a revolving basis, with subsequent appropriations and payments replacing money expended.

APPENDIX

TABLE 2

Compulsory or Voluntary Character of School and Park Site Provisions and Type of Sites Covered

State and City[1*]	Population Category[2*]	Date of Passage or Revision[3*]	Provisions Apply To: Schools, Parks, & Playgrounds	Provisions Apply To: Playgrounds & Parks	Provisions Apply To: Other Public Sites[4*]	Compulsory	Voluntary
Alabama							
Carbon Hill	VII	1958	X			X	
York	VII	1956	X			X	
California							
Palm Springs	VII	--	X			X	
Stockton	IV	1943	X		X		X
Colorado							
Colorado Springs	V	1951	X			X	

1* Besides cities, this column also includes counties and towns. The abbreviations are "Co." for county and "t." for town.

2* Local governmental units were placed in the following population categories in accordance with the populations given in the 1950 U. S. Census of Population: I--over 500,000, II--250,000 to 500,000, III--100,000 to 250,000, IV--50,000 to 100,000, V--25,000 to 50,000, VI--10,000 to 25,000, VII--1 to 10,000

3* "PRO" where used in this column indicates that the regulations were either proposed or in the process of adoption.

4* This column indicates public sites in addition to the others listed. It reflects both provisions which refer to public sites in general terms and those which specify sites other than for schools, parks, and playgrounds.

TABLE 2 (Continued)

Compulsory or Voluntary Character of School and Park Site Provisions and Type of Sites Covered

State and City	Population Category	Date of Passage or Revision	Provisions Apply To: Schools, Parks, & Playgrounds	Playgrounds & Parks	Other Public Sites	Compulsory	Voluntary
Connecticut							
Manchester, t.	V	1946		X			X
Meriden	V	1950		X		X	
Milford, t.	V	1955		X		X	
Norwalk	V	1953		X		X	
District of Columbia							
Washington	I	1938	X				X
Florida							
Daytona Beach	V	1955	X			X	
Lakeland	V	1953	X				X
Pensacola	V	1954	X			X	
St. Petersburg	IV	1954	X		X		X
Georgia							
Augusta	IV	1951	X			X	
DeKalb Co.	III	1955	X				
Macon	IV	1957	X		X	X	X
Marietta	VI	1958	X			X	
Idaho							
Pocatello	V	1954	X		X		X
Illinois							
Park Ridge	VI	1954	schools only			X	

TABLE 2 (Continued)

Compulsory or Voluntary Character of School and Park Site Provisions and Type of Sites Covered

State and City	Population Category	Date of Passage or Revision	Provisions Apply To: Schools, Parks, & Playgrounds	Provisions Apply To: Playgrounds & Parks	Provisions Apply To: Other Public Sites	Compulsory	Voluntary
Indiana							
Bloomington	V	1950	X			X	
Kokomo	V	1953	X			X	
Iowa							
Cedar Rapids	IV	1953	X		X		X
Clinton	V	1952	X		X		X
Dubuque	V	1945	X		X		X
Kansas							
Salina	V	--	X				X
Topeka	IV	1954	X				X
Wichita	III	1953	X		X		X
Kentucky							
Covington	IV	1931	X				X
Glasgow	VII	--	X			X	
Louisville	II	1954	X				X
Newport	V	1946	X			X	
Owensboro	V	1949	X		X	X	
Paducah	V	1954	X		X		X
Paris	VII	--	X			X	
Louisiana							
New Orleans	I	1950	X		X		X

TABLE 2 (Continued)

Compulsory or Voluntary Character of School and Park Site Provisions and Type of Sites Covered

State and City	Population Category	Date of Passage or Revision	Provisions Apply To: Schools, Parks, & Playgrounds	Provisions Apply To: Playgrounds & Parks	Provisions Apply To: Other Public Sites	Compulsory	Voluntary
Maryland							
Baltimore	I	1948	X		X	X	
Upper Montgomery Co.	--	1953	X		X		X
Massachusetts							
Beverly	V	--		X		X	
Fall River	III	1954		X		X	
Haverhill	V	1954		X		X	
Medford	IV	1951		X		X	
Pittsfield	IV	1953		X			X
Quincy	IV	1952	X		X	X	
Springfield	III	1955		X		X	
Worcester	III	1954		X		X	
Michigan							
Bay City	IV	1954	X			X	
Flint	III	1944		X		X	
Port Huron	V	1948		X		X	
Minnesota							
Minneapolis	I	--	X		X		X
St. Cloud	V	--	X			X	
Missouri							
Ferguson	VI	--	X				X
Kansas City	II	1954	X		X		X

TABLE 2 (Continued)

Compulsory or Voluntary Character of School and Park Site Provision and Type of Sites Covered

State and City	Population Category	Date of Passage or Revision	Provisions Apply To: Schools, Parks, & Playgrounds	Provisions Apply To: Playgrounds & Parks	Provisions Apply To: Other Public Sites	Compulsory	Voluntary
Missouri (Continued)							
San Jose	--	--	X		X		X
St. Joseph	IV	1953	X		X	X	
St. Louis	I	1950	X		X		X
Nebraska							
Lincoln	IV	1952	X		X		X
New Hampshire							
Concord	V	1950		X		X	
New Jersey							
Clifton	IV	1954	X			X	
Elizabeth	III	1954	X		X		X
Garfield	V	1954	X			X	
Montclair	V	1954PRO	X		X		X
Newark	II	1954	X			X	
New Brunswick	V	1954PRO		X		X	
Nutley	V	1954	X			X	
Orange	V	1955	X		X		X
Perth Amboy	V	1954	X		X		X
Plainfield	V	1954	X		X		X
New Mexico							
Carlsbad	VI	1951	X		X		X
Roswell	V	1954	X			X	

TABLE 2 (Continued)

Compulsory or Voluntary Character of School and Park Site Provision and Type of Sites Covered

State and City	Population Category	Date of Passage or Revision	Provisions Apply To: Schools, Parks, & Playgrounds	Provisions Apply To: Playgrounds & Parks	Provisions Apply To: Other Public Sites	Compulsory	Voluntary
New York							
Binghampton	IV	1938	X		X		X
Elmira	V	1944		X		X	
Ithaca	V	1953PRO		X		X	
New Rochelle	IV	1948		X		X	
New York	I	--	X			X	
Poughkeepsie	V	1954		X		X	
Rome	V	1942		X			X
Syracuse	III	1952		X			X
Troy	IV	--		X		X	
North Carolina							
Fayetteville	V	1950		X			X
Greensboro	IV	1953	X				X
High Point	V	1948	X			X	
Raleigh	IV	--	X				X
Ohio							
Cincinnati	I	1954	X		X	X	
Dayton	III	1933	X				X
Hamilton	IV	--		X		X	
Lima	IV	1946	X				X
Lorain	IV	--		X		X	
Mansfield	V	1952		X		X	
Portsmouth	V	1953	X		X	X	
Oklahoma							
Tulsa	III	1955	X			X	
Oregon							
Lane Co.	III	1949	X		X		X

TABLE 2 (Continued)

Compulsory or Voluntary Character of School and Park Site Provision and Type of Sites Covered

State and City	Population Category	Date of Passage or Revision	Provisions Apply To: Schools, Parks, & Playgrounds	Provisions Apply To: Playgrounds & Parks	Provisions Apply To: Other Public Sites	Compulsory	Voluntary
Pennsylvania							
Bethlehem	IV	--		X	X	X	
Chester	IV	1952		X		X	
Easton	V	1946		X			X
Harrisburg	IV	1954		X		X	
McKeesport	IV	1953	X			X	
Sharon	V	1954	X			X	
Rhode Island							
Cranston	IV	1950		X	X	X	
East Providence	V	--		X	X	X	
Newport	V	1950		X		X	
South Carolina							
Aiken	VII	1956	X		X	X	
South Dakota							
Rapid City	V	1954PRO	X				X
Tennessee							
Bolivar	VII	1957	X			X	
Cookeville	VII	--		X		X	
Johnson City	V	-- PRO	X			X	
Knoxville	III	1953	X				X
Lewisburg	VII	1951	X			X	
Manchester	VII	1952	X			X	
Shelbyville	VII	1957	X			X	
Waverly	VII	1957	X			X	

TABLE 2 (Concluded)

Compulsory or Voluntary Character of School and Park Site Provision and Type of Sites Covered

State and City	Population Category	Date of Passage or Revision	Provisions Apply To: Schools, Parks, & Playgrounds	Provisions Apply To: Playgrounds & Parks	Provisions Apply To: Other Public Sites	Compulsory	Voluntary
Texas							
Corpus Christi	III	1955		X		X	
Ft. Worth	II	1948	X				X
San Angelo	IV	1952	X				X
San Antonio	II	1953	X			X	
Utah							
Ogden	IV	1954	X				X
Salt Lake City	III	1950		X		X	
Virginia							
Newport News	V	1948		X		X	
Richmond	III	1950	X				X
Roanoke	IV	1950	X		X		X
Washington							
Tacoma	III	1950	X			X	
Wisconsin							
Madison	IV	1954	X			X	
Manitowac	V	1953	X			X	

TABLE 3

Size and Location and Methods of Obtaining School and Park Sites[1*]

State and City	Size and Location of School and Park Sites[2*]							Methods of Obtaining School and Park Sites[3*]			
	City Plan Conformity	Percentage Provisions	Suitable Size & Location	Population Standards	Land Use Considered	Open Space Combination	Waiver or Reduction	Dedication	Reservation: Indefinite Time	Reservation: Specific Time	Contribution to Site Fund
Alabama											
Carbon Hill	X								X		
York	X								X		
California											
Palm Springs	X		X		X			X	X		
Stockton	X										
Colorado											
Colorado Springs	X	X	X		X			X			X

[1*] All local governments with subdivision regulations having school and park site provisions are listed in the table, even though in some cases the provisions do not specify methods for determining size and location or methods for obtaining sites.

[2*] The captions tabulated below are for categories of school and park site provisions which are explained in the section of Chapter I entitled "Provisions Dealing with School and Park Sites."

[3*] The captions tabulated below are for categories of school and park site provisions which are explained in the section of Chapter I entitled "Methods of Obtaining School and Park Sites."

TABLE 3 (Continued)

Size and Location and Methods of Obtaining School and Park Sites

State and City	Size and Location of School and Park Sites							Methods of Obtaining School and Park Sites			
	City Plan Conformity	Percentage Provisions	Suitable Size & Location	Population Standards	Land Use Considered	Open Space Combination	Waiver or Reduction	Dedication	Reservation: Indefinite Time	Reservation: Specific Time	Contribution to Site Fund
Connecticut											
Manchester, t.		X									
Meriden			X					X			
Milford, t.		X	X					X			
Norwalk			X					X			
District of Columbia											
Washington								X			
Florida											
Daytonna Beach	X				X			X	X		
Lakeland			X								
Pensacola	X	X	X					X			X
St. Petersburg								X	X		
Georgia											
Augusta	X		X		X	X	X	X		X	
DeKalb Co.		X	X		X	X	X	X		X	
Macon			X		X			X	X		
Marietta	X		X		X			X	X		
Idaho											
Pocatello								X			

TABLE 3 (Continued)

Size and Location and Methods of Obtaining School and Park Sites

State and City	Size and Location of School and Park Sites							Methods of Obtaining School and Park Sites			
	City Plan Conformity	Percentage Provisions	Suitable Size & Location	Population Standards	Land Use Considered	Open Space Combination	Waiver or Reduction	Dedication	Reservation: Indefinite Time	Reservation: Specific Time	Contribution to Site Fund
Illinois											
Park Ridge										X	X
Indiana											
Bloomington	X							X	X		
Kokomo	X									X	
Iowa											
Cedar Rapids	X										
Clinton	X										
Dubuque	X										
Kansas											
Salina											
Topeka											
Wichita	X										
Kentucky											
Covington		X				X		X			
Glasgow	X									X	
Louisville											
Newport	X		X					X		X	
Owensboro	X										

TABLE 3 (Continued)

Size and Location and Methods of Obtaining School and Park Sites

State and City	Size and Location of School and Park Sites							Methods of Obtaining School and Park Sites			
	City Plan Conformity	Percentage Provisions	Suitable Size & Location	Population Standards	Land Use Considered	Open Space Combination	Waiver or Reduction	Dedication	Reservation: Indefinite Time	Reservation: Specific Time	Contribution to Site Fund
Kentucky											
Paducah	X	X				X			X		
Paris	X							X	X		
Louisiana											
New Orleans	X										
Maryland											
Baltimore	X								X		
Upper Montgomery Co.								X	X		
Massachusetts											
Beverly			X		X				X		
Fall River			X		X				X		
Haverhill			X		X				X		
Medford			X								
Pittsfield								X			
Quincy								X			
Springfield											
Worcester									X		
Michigan											
Bay City	X						X	X			
Flint								X	X		
Port Huron						X		X	X		

TABLE 3 (Continued)

Size and Location and Methods of Obtaining School and Park Sites

State and City	Size and Location of School and Park Sites							Method of Obtaining School and Park Sites			
	City Plan Conformity	Percentage Provisions	Suitable Size & Location	Population Standards	Land Use Considered	Open Space Combination	Waiver or Reduction	Dedication	Reservation: Indefinite Time	Reservation: Specific Time	Contribution to Site Fund
Minnesota											
Minneapolis	X										
St. Cloud	X							X	X		
Missouri											
Ferguson											
Kansas City	X										
San Jose	X										
St. Joseph		X						X		X	
St. Louis	X										
Nebraska											
Lincoln	X										
New Hampshire											
Concord								X	X		
New Jersey											
Clifton	X									X	
Elizabeth	X										
Garfield	X		X		X					X	
Montclair	X										
Newark									X		
New Brunswick	X									X	
Nutley	X									X	

TABLE 3 (Continued)

Size and Location and Methods of Obtaining School and Park Sites

State and City	Size and Location of School and Park Sites							Method of Obtaining School and Park Sites			
	City Plan Conformity	Percentage Provisions	Suitable Size & Location	Population Standards	Land Use Considered	Open Space Combination	Waiver or Reduction	Dedication	Reservation: Indefinite Time	Reservation: Specific Time	Contribution to Site Fund
New Jersey(Continued)											
Orange	X										
Perth Amboy	X										
Plainfield	X										
New Mexico											
Carlsbad	X										
Roswell	X	X						X	X		
New York											
Binghampton	X										
Elmira		X	X					X			
Ithaca		X						X			
New Rochelle		X	X					X			
New York		X									
Poughkeepsie			X								
Rome		X	X								
Syracuse										X	
Troy			X				X				
North Carolina											
Fayetteville											
Greensboro											
High Point		X	X			X		X			
Raleigh				X		X					

TABLE 3 (Continued)

Size and Location and Methods of Obtaining School and Park Sites

State and City	Size and Location of School and Park Sites							Method of Obtaining School and Park Sites			
	City Plan Conformity	Percentage Provisions	Suitable Size & Location	Population Standards	Land Use Considered	Open Space Combination	Waiver or Reduction	Dedication	Reservation: Indefinite Time	Reservation: Specific Time	Contribution to Site Fund
Ohio											
Cincinnati	X									X	
Dayton		X	X			X		X			
Hamilton		X					X				
Lima		X				X		X			
Lorain		X						X			
Mainsfield		X									
Portsmouth	X	X			X	X	X	X		X	
Oklahoma											
Tulsa	X					X				X	
Oregon											
Lane Co.		X						X		X	
Pennsylvania											
Bethlehem		X						X			
Chester			X	X			X				
Easton		X						X			
Harrisburg		X						X			
McKeesport	X							X	X		
Sharon		X						X			

TABLE 3 (Continued)

Size and Location and Methods of Obtaining School and Park Sites

State and City	Size and Location of School and Park Sites							Method of Obtaining School and Park Sites			
	City Plan Conformity	Percentage Provisions	Suitable Size & Location	Population Standards	Land Use Considered	Open Space Combination	Waiver or Reduction	Dedication	Reservation: Indefinite Time	Reservation: Specific Time	Contribution to Site Fund
Rhode Island											
Cranston		X			X			X			
East Providence		X			X			X			
Newport			X								
South Carolina											
Aiken	X			X	X	X	X	X		X	
South Dakota											
Rapid City											
Tennessee											
Bolivar	X	X	X					X	X		
Cookeville	X	X	X					X	X		
Johnson City	X	X	X					X	X		
Knoxville	X										
Lewisburg	X	X	X					X	X		
Manchester	X	X	X					X	X		
Shelbyville	X	X	X					X	X		
Waverly	X	X	X					X	X		
Texas											
Corpus Christi		X						X			X
Fort Worth											

TABLE 3 (Concluded)

Size and Location and Methods of Obtaining School and Park Sites

State and City	Size and Location of School and Park Sites							Method of Obtaining School and Park Sites			
	City Plan Conformity	Percentage Provisions	Suitable Size & Location	Population Standards	Land Use Considered	Open Space Combination	Waiver or Reduction	Dedication	Reservation: Indefinite Time	Reservation: Specific Time	Contribution to Site Fund
Texas(Continued)											
San Angelo											
San Antonio		X	X			X	X	X		X	
Utah											
Ogden											
Salt Lake City	X					X		X		X	
Virginia											
Newport News			X					X			
Richmond											
Roanoke											
Washington											
Tacoma	X	X						X			
Wisconsin											
Madison	X		X				X	X		X	
Manitowac		X				X	X	X			

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